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SUPREME COURT OF THE UNITED STATES.

No. ~~363~~ 99

SARAH W. REED, IMPLEADED WITH LUCY S. SANDERSON, APPELLANT,

vs.

CHARLES W. McINTYRE, ASSIGNEE IN BANKRUPTCY OF WILLIAM H. SHEEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED MARCH 2, 1876.

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1 United States circuit court, district of Minnesota. In equity.

CHARLES W. McINTYRE, ASSIGNEE, &C., }
vs.
SARAH W. REED ET AL. }

Be it remembered that on this 14th day of May, 1874, came Charles W. McIntyre above named, by W. P. Warner, Geo. L. Otis, and E. G. Rogers, esquires, his solicitors, and filed in the clerk's office of said court his bill of complaint in the words and figures following, viz:

To the judges of the circuit court of the United States for the district of Minnesota, sitting in equity:

Charles W. McIntyre, of Saint Paul, in the State of Minnesota, as assignee in bankruptcy of William H. Shuey, brings this his bill of complaint against Sarah W. Reed and Lucy S. Sanderson, of North Hampton, in the State of Massachusetts, and for complaint saith:

That on the 14th day of March, A. D. 1874, and for a long period next prior thereto, one William H. Shuey was a merchant, carrying on his business as such at the city of S't Paul, in the State of Minnesota,
2 and as such merchant was then owing large sums of money which were then overdue and payable, and which through misfortune he was during all that time unable to pay; and that on said day the said William H. Shuey was insolvent and without property sufficient to discharge his debts; whereupon, in order to secure an equitable distribution of his property among his creditors, he, the said William H. Shuey, did on said day duly execute, acknowledge, and deliver unto one William S. Combs a deed bearing date on the 13th day of March, A. D. 1874, whereby he the said William H. Shuey assigned, conveyed, transferred, and set over to the said William S. Combs, in consideration of the premises and of the sum of one dollar to him then in hand paid, all the property and effects of him the said William H. Shuey that then was not exempt from seizure and sale upon execution, to have and to hold the same unto the said William S. Combs, his heirs, legal representatives, and assigns forever, in trust, that he the said William S. Combs should dispose of the same and convert the same into money as soon as practicable, and with and out of the net proceeds thereof pay and discharge all the debts of him the said William H. Shuey in full,
3 if sufficient for that purpose; otherwise, ratably, share and share alike, according to the respective amounts of such debts.

That the said William S. Combs then and there accepted such trust, and on said day duly entered upon the execution of the duties incident thereto; that along with the delivery of such deed the said William H. Shuey on said day duly delivered and surrendered to said William S. Combs all the property affected thereby, whereby said William S. Combs became, and thenceforth, until the execution of the assignment in bankruptcy hereinafter mentioned, was the owner of all such property at law and in equity in trust as aforesaid.

That on said day said William H. Shuey was indebted to the said Sarah W. Reed in a large sum, to wit, in the sum of five thousand dollars and over, and to the said Lucy S. Sanderson in a large amount, to wit, in the sum of twenty-six hundred dollars and over, both of which debts were then past due, and both of which had shortly before that day been by said creditors placed in the hands of the same attorney, E. C. Palmer, esq., for collection, and each of the same then were in process of collection at law.

That afterwards, on said day, in an action then pending in the district court of the second judicial district of the State of Minnesota for Ramsey County, between said Sarah W. Reed as plaintiff on her
4 said demand and against said William H. Shuey and one Thomas G. Barnard as defendants, final judgment was rendered and entered in and by and docketed with the clerk of that court in favor of the plaintiff against the defendants for the amount of such demand, interest thereon and costs of suit, to wit, for the sum of $5,120.45.

That thereupon on said day said Sarah W. Reed, acting through her said attorney in that behalf, caused a writ of execution to be issued out of that court upon such judgment against the property of said judgment debtors and to the sheriff of said Ramsey County, and delivered the same on that day to such sheriff, with specific instructions that he should levy the same upon the property as conveyed and transferred to said William S. Combs, and upon the property of said William S. Combs which was owned and held by him in trust as aforesaid.

That acting under such writ, and pursuant to such instructions, such sheriff did thereupon, on said day, wrongfully seize upon such property, and wrongfully take the same from the custody of the said William S. Combs, and thereupon, at the instance of said Sarah W. Reed, began making preparation to sell the same by virtue of such writ.

5 That said Sarah W. Reed, through her said attorney, E. C. Palmer, had before the issuance of such writ actual knowledge and due notice of all said facts, and particularly of and concerning the said transfer to said William S. Combs, and of the occasion and terms thereof; and at and before the levy of such writ upon such property, said sheriff knew and had actual notice of said transfer to said William S. Combs, and of the occasion and terms thereof.

That after and, to wit, on the 4th day of April, A. D. 1874, said William S. Combs duly claimed and demanded of said sheriff all said property and the possession thereof, and in support of such claim, pursuant to the statute in such cases made and provided, he the said William S. Combs duly made affidavit of his title to such property and to his right to the possession thereof, and in and by such affidavit stated the value thereof and the grounds of such his right and title thereto, which affidavit was duly served on such sheriff then and there; yet said sheriff wrongfully and unlawfully hath, at all times since receiving such demand and affidavit, refused to release such levy or to surrender such property to said William S. Combs, but on the contrary thereof continued until the execution of the stipulation hereinafter mentioned, making
6 preparations to sell such property under said writ at the instance of said Sarah W. Reed.

That by reason of said facts said levy was and ever hath been utterly void and a wilful, wrongful trespass, as said Sarah W. Reed and Lucy S. Sanderson and their said attorney E. C. Palmer well knew then and there; that said Shuey had been for over six months next before the entry of such judgment unable to pay his debts as they became due, and insolvent, and without property sufficient to discharge his debts. That notwithstanding all said facts, and notwithstanding said Sarah W. Reed and Lucy S. Sanderson through her said attorney E. C. Palmer, and another one of their attorneys in that behalf, Harvey Officer, esq., had knowledge and full notice of all said facts and the effect thereof, yet in order, if possible, to prevent an equitable and equal distribution of the property before mentioned among the creditors of the said William H. Shuey in proportion to their respective demands, that the said Sarah W. Reed and Lucy S. Sanderson, through their said attorneys,

colluded together, and, in fraudulent combination the one with the other, prepared in due form, and on the 31st day of March, A. D. 1874, filed in the United States district court for the district of Minnesota, sitting in bankruptcy, a petition for adjudication of bankruptcy against
7 said William H. Shuey, upon which the usual order to show cause was duly issued and served upon said William H. Shuey, who thereupon, before the return-day thereof mentioned, duly appeared in that court, and upon his confession such petition was found true by such court, and thereupon, to wit, on the 2d day of April, A. D. 1874, said William H. Shuey was, at the instance of said Sarah W. Reed and Lucy S. Sanderson, duly adjudged bankrupt on such petition, which adjudication was duly made and entered in such court under and pursuant to the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867.

That afterwards such proceedings were had in that behalf, that heretofore, to wit, on the 20th day of April, A. D. 1874, said complainant was duly chosen by the creditors of said Shuey, and was duly appointed by such court in bankruptcy assignee under said statute of the estate of said Shuey; that thereupon, to wit, on the 21st day of April, 1874, said complainant duly accepted such trust, gave the security required by law, and entered upon the duties incident to such trust; that there and then the proper register in bankruptcy of said United States district court duly executed and delivered to said complainant a deed of assignment pursuant to said act of Congress, whereby said register,
8 by virtue of the power in him vested by such act, assigned and conveyed unto said complainant all the estate, real and personal, of the said bankrupt, with all his deeds, books, and papers relating thereto, as will more fully appear by such deed and by said proceedings in bankruptcy ready to be produced when and where this court may direct, and to which reference is hereby made for greater certainty. That thereupon, to wit, on the 29th day of April, A. D. 1874, while the said sheriff was yet in possession of said property so levied upon by him, and before he had sold or disposed of any portion thereof, said complainant duly claimed and demanded of and from said sheriff that he release said property, and that he deliver and surrender the same to said complainant as such assignee in bankruptcy, and in support of such demand said complainant then duly made affidavit of his title to such property and of his right to the possession thereof, and in and by such affidavit stated the value thereof and the grounds of such his right and title thereto, notwithstanding which such sheriff, at the instance of said Sarah W. Reed, and of said Lucy S. Sanderson, and upon indemnity furnished by them, wrongfully and unlawfully then did, and until the exe-
9 cution of the stipulation hereinafter mentioned, did wrongfully refuse to release said levy or to surrender any of such property, but, on the contrary thereof, continued his preparations to sell and dispose of such property.

That thereupon, to wit, on the 4th day of May, A. D. 1874, said complainant, as such assignee, and said Sarah W. Reed, by her said attorney, entered into and made an agreement and stipulation, of which a true copy is hereto attached, marked "Exhibit A," to which reference is hereby made for greater certainty; that in accordance with such stipulation such property has been surrendered to complainant, and he is now disposing of the same accordingly, and such party thereto hath performed hitherto.

Complainant further saith that at and before the making of said levy,

said Shuey was insolvent and contemplating bankruptcy, and that while in that condition he suffered and procured said property to be taken upon legal process, to wit, upon the said writ of execution, with the intent thereby to give a preference to the said Sarah W. Reed, and to defeat, hinder, and delay the operation of said act of Congress; that said Sarah W. Reed and her attorney in that behalf, before said levy, had reasonable cause to believe, and very well knew, that said
10 Shuey was then and there insolvent and contemplating bankruptcy, and that such levy was so made in fraud of the provisions of said act of Congress, and to prevent said property from coming to the assignee in bankruptcy of said Shuey, and to prevent the same from being distributed under said act of Congress, and to defeat the object thereof, and to hinder, impede, and delay the operation thereof, and with a view to the commencement of said proceedings in bankruptcy, as said Sarah W. Reed and Lucy S. Sanderson, and their attorneys in that behalf, as well as the said Shuey, then well knew.

Complainant further saith, that a true copy of said assignment to said Combs is hereto attached, marked "Exhibit B."

Complainant further saith that since he became assignee of said estate as aforesaid, he hath often requested said Sarah W. Reed's said attorney that he withdraw such levy, and surrender such property and come in under said bankruptcy proceedings for the fair and just proportion of the proceeds of such estate, upon the same footing with the other creditors of said Shuey; but to comply with such request she has utterly refused, and to prevent sacrifice of the said property such stipulation was made.

11 To the end therefore that the said defendants and each of them may, if they can, show why said complainant should not have the relief hereby prayed, and may without oath, their answers on oath being hereby waived, but according to the best of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the premises aforesaid, and that the said judgment in favor of said Sarah W. Reed may, as well as the said writ and levy thereof, be each and all adjudged illegal, fraudulent, and void, and that said Sarah W. Reed be adjudged to have no lien upon any of said property, or upon the proceeds thereof, and that said complainant may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity: May it please your honors that said defendants be required to appear and answer to all and singular the premises, and stand and abide such order and decree herein as to your honors shall seem meet. Your complainant will ever pray, &c.

CHAS. W. McINTYRE,
Complainant.

W. P. WARNER, GEO. L. OTIS, and E. G. ROGERS,
Solicitors and Counsel for Complainant.

12 EXHIBIT A.

District court of the United States, district of Minnesota.

In the matter of William H. Shuey, bankrupt. In bankruptcy.

Whereas on the 14th day of March, 1874, in the district court of the second judicial district, county of Ramsey and State of Minnesota, judgment was duly rendered in an action theretofore commenced in

said court, in which action Sarah W. Reed was plaintiff and William H. Shuey above named and one Thomas G. Barnard were defendants, for $5,120.45 damages and costs in favor of said plaintiff, and against said defendants, and an execution on said day was issued thereon, and placed in the hands of John Grace, sheriff of said Ramsey County, for service, and was by said sheriff levied on the property, goods, wares, and merchandise situated in the three-story stone building, No. 18 East Third street, in Saint Paul, in said county of Ramsey, as the propery of said William H. Shuey, and said goods so levied upon, taken into the actual possession of said sheriff then and there, and an inventory
13 thereof made, and served on said defendant William H. Shuey, and the said property advertised for sale according to law, to satisfy said execution and costs of seizure and sale, on April 10, 1874, at said No. 18.

And whereas said William H. Shuey, on the 2d day of April, 1874, in the district court of the United States, above named, was duly adjudged a bankrupt upon the petition of Lucy S. Sanderson, one of the creditors of said Shuey.

And whereas an injunction was issued out of said last-named court upon the petition of the Merchants' National Bank of Saint Paul, directed to said Sarah W. Reed, and said John Grace, sheriff as aforesaid, enjoining them, their agents, servants, and attorneys, from selling or disposing of said property so levied on, and which said process was duly served on said sheriff, on said April 6th, 1874, and said sale was on said 10th day of April, 1874, duly adjourned until April 24th, 1874, at said place.

And whereas Charles W. McIntyre has been duly appointed assignee in bankruptcy of said Shuey, and has qualified and entered on the discharge of his duties as such assignee, and is desirous of bringing a suit in equity as such assignee, to test and determine the validity of said levy upon said property, and the right of said judgment creditor
14 to satisfy her said judgment out of said property so levied on, the value of which is about $10,000, and sufficient for that purpose; and said district court of the United States has refused to dissolve said injunction or modify the same, except upon condition that the proceeds of said sale, under said levy, shall be brought into said court of bankruptcy, and deposited to await the result of said suit in equity:

Now it is hereby stipulated and agreed, by and between the said Sarah W. Reed, acting by her attorney of record in said judgment, E. C. Palmer, and said Charles W. McIntyre, assignee as aforesaid, acting as such assignee, that said property so levied on may be taken possession of by said assignee in bankruptcy, and held and disposed of with the property of said bankrupt already in possession of said assignee under the of the said court of bankruptcy, but without prejudice to the rights of said judgment creditor acquired under said levy, and without prejudice to her right to raise such questions in, and take such objections to said suit in equity, which shall be commenced within ten days from this date, as she might have raised or taken, had said property remained in custody of said sheriff under said levy, or been sold
15 thereunder at the date first noticed, it being the object of this stipulation to save further cost and expense under said levy, to protect said property from sacrifice at a forced sale in its present unfinished state, and to preserve the rights of said judgment creditor, if any she has, under said levy, to the said property.

It is further agreed that said assignee in bankruptcy shall forthwith pay said sheriff his reasonable costs and fees in and about said levy

and the care and custody of said property, without claim for reimbursement from said judgment creditor, and that in case said suit in equity shall be determined adversely to said assignee in respect of said levy, or shall not result in a judgment declaring said levy void, then the said judgment of the said Sarah W. Reed shall be paid in full out of the proceeds of said bankrupt's property, with legal interest thereon, by said assignee, who shall reserve and keep on deposit in the proper place of deposit provided in bankruptcy proceedings, sufficient money for that purpose. The said assignee not hereby waiving the right to attack said judgment, execution, and levy, and each of them, the same in all respects as though this stipulation had not been made.

CHAS. W. McINTYRE,
16 *Assignee of Wm. H. Shuey in Bankruptcy.*
SARAH W. REED,
By E. C. PALMER, *her Attorney.*

On making the within stipulation, and on due consideration of the matters involved, it is ordered that the injunction heretofore issued against the sheriff named in said stipulation be modified so as to allow said property levied on to go into possession of said assignee in bankruptcy under said stipulation; and that said stipulation shall be filed in the clerk's office of said court and become operative and binding on the parties therein named, according to its terms, from the date of said filing.

R. R. NELSON, *Judge.*

EXHIBIT B.

This indenture, made the 13th day of March, A. D. 1864, between William H. Shuey, of St. Paul, in the State of Minnesota, party of the first part, and William S. Combs, of St. Paul, in the State of Minnesota, party of the second part.

Whereas the said party of the first part is justly indebted in sundry considerable sums of money, and has become unable to pay and
17 discharge the same with punctuality or in full, and is now desirous of making a fair and equitable distribution of his property and effects among his creditors:

Now, therefore, this indenture witnesseth that the said party of the first part, in consideration of the premises and of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, released, assigned, transferred, and set over, and by these presents does grant, bargain, and sell, release, assign, transfer, and set over unto the said party of the second part, his heirs and assigns, forever, all and singular the lands, tenements, and hereditaments situate, lying, and being in the State of Minnesota or elsewhere, and all the goods, chattels, merchandise, bills, bonds, book accounts, claims, demands, choses in action, judgments, evidences of debts, and property of every name and nature whatsoever, except only property exempt from execution, of the said party of the first part, including a stock of merchandise situated in his store, number eighteen East Third street, Saint Paul, and workshop and storeroom situated on Second street, back of his store, said stock of merchandise consisting of furniture, finished and unfinished; and also all stock in trade; and also all unmanufactured goods, and all
18 goods of every kind and nature, except such goods as are by law exempt as aforesaid, to have and to hold the same and every part and parcel of the same, with the appurtenances, to the said party of the

econd part, his heirs, executors, administrators, and assigns. In trust, nevertheless, and to and for the following uses, intents, and purposes, that is to say:

That the said party of the second part shall take possession of all and singular the lands, tenements, and hereditaments, property, and effects hereby assigned, and sell and dispose of the same upon such terms and conditions as in his judgment may appear best, but not upon credit, and convert the same into money, and shall also collect all and singular the said debts, due bills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectible, and thereupon execute, acknowledge, and deliver all necessary conveyances and instruments for the purposes aforesaid; and by and with the proceeds of such sales and collections the said party of the second part shall first pay and disburse all the just and reasonable expenses, costs, charges, and commissions of executing and carrying into effect this assignment,
19 and by and with the residue or net proceeds or avails of such sales and collections the said party of the second part shall pay and discharge all the debts and liabilities of the party of the first part, whether due or to grow due, provided such net proceeds and avails shall be sufficient for the purpose; and if insufficient then the same shall be applied pro rata, share and share alike, to the payment of the said debts, according to their respective amounts; and after paying the said debts and liabilities in full, the said party of the second part shall return the surplus of the said net proceeds and avails, if any there shall be, to the said party of the first part, his executors, administrators, or assigns.

And for the better execution of these presents and of the several trusts hereby reposed, the said party of the first part does hereby make, constitute, and appoint the said party of the second part, and his executors, administrators, and assigns, his true and lawful attorney irrevocable, with full power and authority to transact and perform all acts, deeds, matters, and things which can or may be necessary in the premises, as fully and completely as said party of the first part might or could do were these presents not executed, and attorneys one or more under him to make, nominate, and appoint, with full power
20 of substitution and revocation, hereby ratifying and confirming all and everything whatsoever that my said attorney and his said attorney shall do or cause to be done in the premises.

And the said party of the second part doth hereby accept the trust created and in him reposed by these presents, and doth for himself, his heirs, executors, and administrators, hereby covenant and agree to and with the said party of the first part, his executors, administrators, and assigns, that he, the said party of the second part, will honestly and faithfully and without delay execute the same, according to the best of his skill, knowledge, and ability.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first hereinabove written.

WILLIAM H. SHUEY. [SEAL.]
WILLIAM S. COMBS. [SEAL.]

Signed, sealed, and delivered in presence of—
E. G. ROGERS.
F. L. ROGERS.

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it known that on this 13th day of March, A. D. 1874, personally came before me William H. Shuey and William S. Combs,

21 the assignee named, and to me well known to be the identical persons who executed the foregoing deed of assignment, and they each acknowledge that they executed the same freely and voluntarily and for the uses and purposes therein expressed.

In witness whereof I have hereunto affixed my hand and official seal this March 13th, A. D. 1874.

[SEAL.] E. G. ROGERS,
Notary Public, Ramsey County, Minnesota.

Whereupon a writ of subpœna was duly issued out of said court under seal thereof duly tested, and is, with the return thereon, indorsed in the words and figures following, viz:

UNITED STATES OF AMERICA,
District of Minnesota, ss:

The President of the United States of America to Sarah W. Reed, Lucy S. Sanderson, greeting:

You are hereby commanded to appear before our judges of our circuit court of the United States of America for the district of Minnesota, at Saint Paul, in said district, on the first Monday in the month of July next, to answer the bill of complaint of Charles W. McIntyre, as assignee in bankruptcy of William H. Shuey, a bankrupt, this
22 day filed in the clerk's office of said court, in said S't Paul, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Minnesota to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at S't Paul aforesaid, this 14th day of May, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year.

[SEAL.] H. E. MANN, *Clerk.*

Memorandum.

The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at S't Paul aforesaid, on or before the day to which this writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

H. E. MANN, *Clerk.*

W. P. WARNER, GEO. L. OTIS, and E. G. ROGERS,
Plaintiffs' Solicitors.

DISTRICT OF MINNESOTA, *ss:*

I hereby certify that I have made diligent search and inquiry
23 for the within-named defendants, and I cannot find them in this district.

R. N. McLAREN,
U. S. Marshal.

S'T PAUL, *May* 15, '74.

And afterwards, to wit, at rules, held at the clerk's office of said court on the 7th day of September, 1874, the following proceeding, among others, was had, viz:

CHARLES W. MCINTYRE, ASSIGNEE, &C.,
vs.
SARAH W. REED ET AL.

And now comes the defendant, Sarah W. Reed, by E. C. Palmer, esq., her solicitor, on whose motion it is ordered that the appearance of said defendant be, and the same is hereby, entered.

And afterwards, to wit, on the 3d day of October, A. D. 1874, came the defendant, Sarah W. Reed, by E. C. Palmer, esq., her solicitor, and files in the clerk's office of said court her answer to the plaintiff's bill of complaint in the words and figures following, viz:

CHARLES W. MCINTYRE, ASSIGNEE IN BANKRUPTCY of William H. Shuey, bankrupt,
24 *vs.*
SARAH W. REED AND LUCY S. SANDERSON.

The answer of Sarah W. Reed, one of the defendants in the suit above entitled, to the bill of complaint of Charles W. McIntyre, assignee of William H. Shuey, bankrupt, complainant.

This defendant, now and at all times hereinafter saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections contained in the said complainant's said bill of complaint, for answer thereunto, or unto so much thereof or such parts thereof as this defendant is advised is or are material or necessary for her to make answer unto, this defendant answering, saith:

First. She admits and avers that on the 14th day of March, A. D. 1874, and for two years prior thereto, said William H. Shuey, named in complainant's said bill of complaint, was a merchant at said city of S't Paul, engaged in the purchase, manufacture, and sale, at wholesale and retail, of furniture and furnishing goods, had been and was doing a large and lucrative business, and in good credit and standing as such merchant and in his said business; and this defendant denies that on said
25 14th day of March, A. D. 1874, said William H. Shuey was owing large sums of money or any money other than the sums payable to this defendant, all which were payable on demand, and denies that said Shuey was then and there insolvent, or known to be insolvent, or without property sufficient to discharge his debts whenever payment thereof should be demanded and insisted on.

Second. This defendant admits that on the said 14th day of March, A. D. 1874, the said William H. Shuey did sign and deliver to William S. Combs, named in said complainant's said bill of complaint, and who was a bookseller in St. Paul, the instrument, a copy whereof is attached to complainant's said bill, marked B, but she denies that the same was made to secure an equitable or any distribution of the property of said Shuey among his creditors, but was intended to hinder, delay, and defraud the said creditors and each of the same, as said Combs then and there well knew.

Third. Further answering, this defendant alleges that said instrument attached to said complainant's said bill, marked B, was made, delivered, and accepted with intent on the part of William S. Combs to hinder, delay, and defraud the creditors of said Shuey in and about the enforcement and collection of their just and lawful debts, and
26 particularly this defendant, and that the same was so made, delivered, and accepted in fraud of the provisions of an act of Con-

gress of the United States approved March 2, 1867, entitled "An act to establish a uniform system of bankruptcy throughout the United States," in that behalf made and provided, and was void.

Fourth. Further answering, this defendant admits that on said 14th day of March, A. D. 1874, the said William H. Shuey was indebted to this defendant in the sum of $5,120\frac{46}{100}$, but as to how large a sum, if any, said Shuey was then and there owing to Lucy S. Sanderson, named in complainant's said bill of complaint, this defendant does not know, and cannot state, but upon information and belief denies that any other sum or debt then owing by the said William H. Shuey was in process of collection, or then being collected, save and except the said sum due and owing to this defendant.

Fifth. Further answering, this defendant admits and avers that on said 14th day of March, A. D. 1874, but before the making, delivery, or acceptance of the said instrument marked B, attached to said bill of complaint, and prior to the delivery of any property or effects of the said William H. Shuey to the said William S. Combs thereunder, she duly recovered a judgment against said William H. Shuey in the sum of $\$5,120\frac{46}{100}$ damages and costs, and that the same was duly docketted in the county of Ramsey and State of Minnesota on said last-named day.

27

That said judgment was recorded in an action commenced in the district court, within and for the second judicial district in said county of Ramsey, on the 5th day of February, A. D. 1874, upon a promissory note dated April 1st, 1872, for $5,000, due on demand, with interest at ten per cent. per annum, payable quarterly, and on which interest has been paid in full to January 1st, 1874, payable to the order of Sarah W. Reed, this defendant, and signed Thomas G. Barnard, William H. Shuey, security. That William H. Shuey, intending to hinder, delay, and defraud this defendant in the premises, did procure from the judge of said court an order extending time to answer twenty days, upon an affidavit of merits, and did in due time interpose an answer in said action, and therein and thereby resisted and opposed the recovery of judgment, and such proceedings were thereupon had in said cause that judgment was duly rendered therein as stated aforesaid; that execution was forthwith duly issued out of said court, upon said judgment, and said sheriff of said Ramsey County was therein commanded to collect the amount named therein, to wit, the sum of five thousand one hundred and twenty and $\frac{46}{100}$ dollars, out of the personal property of said judgment debtors or of either of them, if sufficient could be found in this county; if not, then out of the real property of said debtors, owned by them or of either of them in said county at the date of docketting of the said judgment; that said Thomas G. Barnard then resided in the county of Hennepin, and did not own or possess any property in said county of Ramsey.

28

That said sheriff duly levied said execution on said 14th day of March, A. D. 1874, on the personal property of said William H. Shuey, then situate and being in the possession of said Shuey, in his usual place of business on Third street, in St. Paul, in said county of Ramsey, and did take said property into his, said sheriff's, possession under said writ of execution to an amount and of value sufficient to satisfy said execution with costs.

That said levy was rightfully and duly made, and said property rightfully taken into the custody and possession of said sheriff, while the same was owned by and in the possession and under the control of said William H. Shuey, and before any delivery to or possession had been

taken by the said William S. Combs of the same or any part there-
29 of, and before said sheriff, or this defendant or her said attorney, had any notice or knowledge that any transfer and delivery of said property, or any part thereof, had been made; that no instructions were given said sheriff to levy said writ upon any property belonging to or held in trust by the said William S. Combs; that neither said sheriff nor said attorney of this defendant ever saw or knew of the terms of said instrument marked B, attached to said bill of complaint, until long after said levy of said execution had been made.

Sixth. Further answering, this defendant admits that said William S. Combs made a demand upon said sheriff for the surrender and delivery of said property so levied on, to him the said Combs, and made an affidavit in support of said demand, and served the same on said sheriff at or about the time in said bill of complaint stated, and that said sheriff refused to release said levy or surrender said property to said William S. Combs, but continued his preparation to sell the same at public auction in accordance with the statute in such case provided, as he lawfully might do and as it was his official duty to do; that no greater amount of property was levied on as aforesaid and held by said sheriff than sufficient to satisfy the amount of said execution, with interest,
30 costs, and expenses of levy, holding, and sale; and this defendant denies that by reason of any facts or allegations set forth in said bill of complaint said levy was or ever has been void, or a trespass, or that this defendant or her said attorney then and there, or at any time or place, well knew that said acts were void or a trespass, or that said Shuey had been for over six months, or any time prior to the entry of said judgment, unable to pay his debts as they became due, or was insolvent, or without property sufficient to discharge his debts.

Seventh. Further answering, this defendant denies that she and her said attorney, E. C. Palmer, or the said Lucy S. Sanderson, or any or either of them, colluded together, or in fraudulent or other combination the one with the other, or in any way with any person or persons or for any purpose prepared or filed a petition for adjudication of bankruptcy against said William H. Shuey, whether as alledged in said bill of complaint or otherwise.

She alleges upon information and belief that the said Lucy S. Sanderson, acting through her said attorney, Harvey Officer, in good faith, and with an honest intent in the premises, and because said Shuey had committed an act of bankruptcy, and been guilty of a fraudulent
31 attempt to evade the provisions of the bankrupt law, did institute proceedings in involuntary bankruptcy against said William H. Shuey, and for that purpose and no other did file on the 31st day of March, A. D. 1874, a petition in due form for adjudication in bankruptcy in the United States district court for the district of Minnesota, against the said William H. Shuey, upon which the usual order to show cause was issued and served on said William H. Shuey, and such proceedings were thereupon had in the premises, that on the 2d day of April, A. D. 1874, the said William H. Shuey was duly adjudged bankrupt on said petition, and upon his written consent thereto then and there given and filed in said district court; that said consent was given and filed upon the advice and under the direction of E. G. Rogers, esq., who was then and there one of the attorneys of said William H. Shuey, and William S. Combs, and without the procurement, knowledge, or consent of this defendant or of E. C. Palmer, her said attorney, or of any one acting for or in her behalf, and was so made and filed for the purpose and with the intent on the part of said Shuey, Rogers, and the peti-

tioning creditor aforesaid and the Merchants' National Bank of St. Paul, hereinafter referred to, and its counsel, to procure said ad-
32 judication in bankruptcy prior to the return-day of said order to show cause, and thus enable said parties to apply for and procure the writ of injunction against said sheriff and the said Shuey, hereinafter set forth, and harass and hinder this defendant in the lawful collection of her said judgment so levied as aforesaid on the said property of the said William H. Shuey.

Eighth. Further answering, this defendant alleges that on the 4th day of April, A. D. 1874, the Merchants' National Bank of St. Paul, a corporation duly organized under the laws of the United States, and doing business at St. Paul, in said district of Minnesota, being a creditor of said William H. Shuey, bankrupt, as aforesaid, made and filed a petition in said district court, entitled In the matter of William H. Shuey, bankrupt, and praying said court upon grounds set forth in said petition to allow and issue a writ of injunction commanding and enjoining said John Grace, sheriff aforesaid, and this defendant, their agents, attorneys, and servants, from selling at public auction or otherwise, or in any manner disposing of the property of said William H. Shuey, bankrupt, levied upon and advertised for sale, until the further order of the court, leave being given to said sheriff and this defendant to move said court to vacate said injunction upon notice to said bank, which
33 said writ, in the terms aforesaid, was then and there upon said petition duly verified, and sufficient security given, and upon the affidavit of said E. G. Rogers and said William H. Shuey allowed by said court and duly issued under the seal of said court, and served on April 6th, 1874, on said sheriff and E. C. Palmer, attorney of this defendant; reference being made to said petition, affidavits, order, and writs, on file in said court, for greater certainty.

Ninth. Further answering, this defendant alleges that, pursuant to said leave given as aforesaid, said court was moved in her behalf, upon due notice to said Merchants' National Bank, to dissolve said writ of injunction, which motion was heard by said court, said parties appearing by their respective attorneys on April 17th, 1874, and taken under advisement; and thereupon said court filed a decision denying said motion, unless this defendant should consent to a deposit in said court by said sheriff of all moneys realized from the sale by him of said property so levied on, to await any suit by said assignee in bankruptcy to be brought to test the validity of said levy, which said motion, papers, affidavits, and decision are on file in said court, and to which reference is made for greater certainty.

33½ Tenth. Further answering, this defendant alleges that, under the compulsion of said decision and to save costs and expenses of the sale of said property by said sheriff, the said Charles W. McIntyre, assignee, as aforesaid, and this defendant acting by and through her said attorney, E. C. Palmer, made and filed on May 4, 1874, in the said court, a stipulation, being the same referred to in said bill of complaint as on file in said court, and to which, with the order of court made thereon, reference is hereby made for greater certainty.

That thereupon this defendant delivered and surrendered into the possession of said complainant, assignee as aforesaid, all and singular the goods and property so levied on by said sheriff as aforesaid, and the said assignee received and took charge of the same, and sold and disposed of the same, and received the proceeds thereof, which he now holds as said assignee in bankruptcy of the said William H. Shuey.

Eleventh. Further answering, this defendant admits that said complainant was chosen assignee in bankruptcy of the said William H. Shuey, and accepted said position and gave the requisite security, as alleged in said bill of complaint, and that he received an assign-
34 ment of all the property of the said bankrupt which said bankrupt owned or had or was entitled to have on the 31st day of March, A. D. 1874, as will fully appear by reference to said instrument of assignment executed as aforesaid, to which reference is hereby made for greater certainty; and this defendant admits that on the of A. D. 1874, said complainant, as assignee as aforesaid, demanded the said property so levied on as aforesaid by said sheriff, and served a copy-affidavit on said sheriff in that behalf, of the contents of which this defendant is ignorant and cannot set forth, but craves leave to refer to the said affidavit and have the same produced in court for greater certainty; but this defendant denies that any other demand or request to abandon said levy or surrender said property so levied on as aforesaid has been made upon this defendant or her said attorney.

Twelfth. Further answering, this defendant denies that at and before the making of said levy, said Shuey was insolvent and contemplating bankruptcy, or that he suffered or procured said property to be taken upon legal process, to wit, upon said writ of execution, with the intent thereby to give a preference to the said Sarah W. Reed, or defeat, hinder, or delay the operation of said act of Congress, but said alle-
34½ gations in that behalf, in said complainant's said bill of complaint set forth, are all and singular untrue; and denies that she or her said attorney, before said levy, had reasonable or any cause to believe or that they or either of them knew that said Shuey was then and there insolvent and contemplating bankruptcy, or that said levy was so made in fraud of the provisions of said act of Congress, or to prevent said property from coming to the assignee in bankruptcy of said Shuey, or to prevent the same from being distributed under said act of Congress, or to defeat the object thereof, or to hinder, impede, or delay the operation thereof, or with a view to the commencement of said proceedings in bankruptcy, or that this defendant, or said Lucy S. Sanderson, or their attorney or attorneys, or either of them, or the said Shuey, had any such intent or knowledge.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith she is by the said bill charged, without this that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is not true to the knowledge or belief of this defendant; all which matters and
35 things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SARAH W. REED,
By E. C. PALMER,
Her Solicitor.
E. C. PALMER,
Solicitor and of Counsel for Defendant, Sarah W. Reed.

And afterwards, to wit, on the 2d day of November, A. D. 1874, came the said plaintiff, by his solicitors, and filed in the clerk's office of said

court his replication to the answer of Sarah W. Reed, one of the defendants, in the words and figures following, to wit:

CHARLES W. McINTYRE, ASSIGNEE IN BANKRUPTCY of William H. Shuey
vs.
SARAH W. REED.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exceptions which may be had or taken to the manifold insufficiencies of the
36 answer of said defendant, Sarah W. Reed, to the complaint in this cause, for replication thereto, says he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in law to be answered unto: and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this replaint is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

C. W. McINTYRE,
Complainant.

W. P. WARNER, E. G. ROGERS, GEO. L. OTIS,
Solicitors for Complainant.

And afterwards, to wit, at rules held at the clerk's office of said court on the 7th day of December A. D., 1874, the following proceeding, among others, was had, viz:

37 CHARLES W. McINTYRE, ASSIGNEE OF William H. Shuey, bankrupt,
vs.
SARAH W. REED ET AL.

On motion of W. P. Warner, solicitor for plaintiff, ordered that this cause be, and it is hereby, set down for hearing at the next general term of this court, to be held at the city of Saint Paul, on the second Monday, being the 14th day of December, A. D. 1874, at the opening of court on that day, or as soon thereafter as counsel can be heard.

And afterwards, at a general term of said court, held at S't Paul, in said district, to wit, the December term thereof, 1874, and on the 14th day of December, 1874, the following proceeding was had, viz:

CHARLES W. McINTYRE, ASSIGNEE, &C.,
vs.
SARAH W. REED ET AL.

On motion of defendant's solicitor, and it appearing that the evidence of the parties has not been taken, and that the time for taking the same has not expired, ordered that this cause be stricken from the calendar.

38 And afterwards, at a general term of said court, held at S't Paul, in said district, to wit, the December term thereof, 1874, and on the 17th day of December, 1874, the following proceeding was had, viz:

CHARLES W. MCINTYRE, ASSIGNEE, &C.,
vs.
SARAH W. REED ET AL.

Pursuant to the stipulation of the parties, ordered that this cause be referred to John Y. Page to take and report the testimony, &c.

And afterwards, at a general term of said court, held at S't Paul, in said district, to wit, the June term thereof 1875, and on the 28th day of June, 1875, the following proceeding was had, viz:

CHARLES W. MCINTYRE, ASSIGNEE, &C.,
vs.
SARAH W. REED ET AL.

This cause coming on to be heard, was argued by counsel, E. G. Rogers for plaintiff, and E. C. Palmer, esq., for defendant.

39 And afterwards, at a general term of said court, held at Saint Paul, in said district, to wit, the June term thereof, 1875, and on the 29th day of June, A. D. 1875, the following proceeding was had, viz:

CHARLES W. MCINTYRE, ASSIGNEE, &C.,
vs.
SARAH W. REED ET AL.

This cause coming on for further hearing, was argued by counsel and submitted to the court, and by the court taken under advisement.

And afterwards, at a general term of said court, held at Saint Paul, in said district, to wit, the June term thereof, 1875, and on the 30th day of June, A. D. 1875, the following proceeding was had, viz:

CHARLES W. MCINTYRE, ASSIGNEE IN BANKRUPTCY of William H. Shuey, bankrupt,
vs.
CHARLES W. REED ET AL.
In equity.

40 This cause came on to be heard upon the pleadings and proofs therein, at this June term, 1875, of said court, and was argued by counsel, and thereupon, upon consideration, it was ordered, adjudged, and decreed as follows:

That the levy set out in the complainant's bill of complaint, made by the sheriff of the county of Ramsey, in the State of Minnesota, under that certain writ of execution, in said bill described as issued out of the district court for the second judicial district, county of Ramsey and State of Minnesota, in that certain action therein described, wherein this defendant, Sarah W. Reed, was plaintiff, and the said William H. Shuey and one Thomas G. Bernard were defendants, be, and the same is, invalid and of no effect, and the property so levied upon and seized thereunder, and every part thereof, rightfully belongs to and is vested in the complainant as said assignee in bankruptcy, free and clear and discharged from said execution and from the said levy thereunder and from

all lien or claim of the said defendant, Sarah W. Reed, under or by virtue of the said execution and levy.

It is further ordered, adjudged, and decreed that the proceeds of said property referred to in the stipulation annexed to the complainant's bill, deposited in the depository of the United States district court for the district of Minnesota, rightfully belongs to the complainant
41 as such assignee, and shall be administered by the said United States district court as it may direct.

And it is further ordered, adjudged, and decreed that the said defendant, Sarah W. Reed, pay to the said complainant his costs in this suit to be taxed, and that the said complainant have execution for such costs.

The defendants praying an appeal, ordered, that the same be, and it is hereby, allowed, and the amount of the appeal bond is hereby fixed at $500.

42 In the United States circuit court for the district of Minnesota.

CHARLES W. MCINTYRE, ASSIGNEE OF W. H. Shuey, a bankrupt,
vs.
SARAH W. REED ET AL. } In equity.

It is agreed that the testimony of said William H. Shuey and of Edward G. Rogers and William S. Combs, on behalf of the plaintiff in this cause, be taken by and before one of the masters in chancery of said court, viz: John Y. Page, esq., upon verbal questions; that such examination be had at the office of E. C. Palmer, esq., in S't Paul, in said State, at 11 o'clock a. m., on the 17th day of December, A. D. 1874; that such testimony, when taken and filed in said court, shall be received in evidence at the trial of said cause, subject to the right of each party to object to any part thereof upon the same grounds and with the like effect as if such witness were testifying in open court at such trial, provided such objection be interposed and noted by said master in his record of such testimony as the same proceeds.

W. P. WARNER,
GEO. L. OTIS, and
43 E. G. ROGERS,
Pff's Att'ys.
E. C. PALMER,
Solicitor and Counsel for Def't Sarah W. Reed.

In the United States circuit court for the district of Minnesota. In equity.

CHA'S W. MCINTYRE, ASSIGNEE, &C.,
vs.
SARAH W. REED ET AL.

Pursuant to the foregoing stipulation, witnesses were produced before me; both parties being represented by counsel at the time and place mentioned, and the taking of the testimony was proceeded with as follows:

WILLIAM H. SHUEY, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

My name is William H. Shuey; reside in S'tPaul; am thirty years of age; am same W'm H. Shuey who was adjudged a bankrupt; C. W. Mc-

Intyre is my assignee; I know Sarah W. Reed, also Lucy S. San-
44 derson. They have resided for many years at North Hampton, Mass., and do now. On 14th March, 1874, I was a merchant carrying on business in the city of S't Paul, and resided in S't Paul at that time. Had resided here for over a year immediately preceding that time. I was indebted at that time.

1. Question by M'r Warner on part of plaintiff. To what amount?

(Objected to by E. C. Palmer, for M'r's Reed, as incompetent, immaterial, and irrelevant.)

Ans. I think in the neighborhood of $20,000 or more; at least that. I think I was indebted to that amount, exclusive of any indorsements or other obligations for others, as grantor, surety, or otherwise. This $20,000 does not include the claim of Sarah W. Reed. I know W'm S. Combs. I made a general assignment to him on March 14, 1874.

2. Question by M'r Warner. At what time of day was that instrument delivered to M'r Combs?

(Objected to by E. C. Palmer, for M'r's Reed, as incompetent, immaterial, and irrelevant; and because the assignee in bankruptcy is estopped from claiming under said assignment as against the defendant Reed.)

Ans. I think about 9 o'clock; not later than 10 in the forenoon of that day.

45 3. Question. State whether or not any of your debts were part due at that time.

(Objected to by Judge Palmer for same reasons as last taken.)

Ans. I had debts part due at that time.

4. Question. State whether or not you were able at that time to meet or pay your debts as they came due.

(Objected to by Judge Palmer on same grounds as last taken, and, further, because it calls for the opinion of the witness.)

Ans. I was not.

5. Question. State whether or not you were being pressed at that time by any of your creditors for payment of their respective demands.

(Objected to by Judge Palmer on same grounds as last taken.)

Ans. I was. I had been sued by some of them before that time—before the assignment—at least one, and I think two suits were pending against me at the time of the assignment to Combs. In one of the suits to which I refer Sarah W. Reed was plaintiff; I mean the defendant herein. I can remember the names of the attorneys, but am not positive as to the name of the plaintiff in the other suits referred to. The attorneys were Newell and Brill.

46 6. Question. At the time of this assignment to Mr. Combs, what did you do with the property referred to in it?

(Same objections by Judge Palmer as to question No. 2.)

Ans. I delivered it over to Mr. Combs—all of it. I also delivered Mr. Combs the keys of my store and the combination of the safe; all at the same time with the assignment.

7. Question. What did Mr. Combs do in regard to that property then and there?

(Same objections by Judge Palmer as to question No. 2.)

Ans. He took possession immediately of all of it.

8. Question. State whether you have ever been in possession of any of that property since that time.

(Same objection as to question No. 4.)

Ans. I have not been, and I have never exercised any act of ownership over any part of that property since my delivery thereof to said Combs.

47 9. Question. State whether or not any execution in favor of said Sarah W. Reed has ever been levied upon any of said property before said transfer and delivery thereof to said Combs.

(Same objections by Judge Palmer as to question No. 4.)

Ans. No such execution had been levied previous to that time.

10. Question. In whose hands was Sarah W. Reed's claim against you at the time of the assignment?

(Same objection by Judge Palmer as to question No. 2.)

Ans. In those of E. C. Palmer, esq.

11. Question. In whose hands was the claim of Lucy S. Sanderson against you at that time?

(Same objection by Judge Palmer as to question No. 2, and because the court has no jurisdiction of Lucy S. Sanderson in this action.)

Ans. In the same hands. E. C. Palmer was then an attorney at law. The claim of Sarah W. Reed had been in his hands at least thirty days previous to the assignment, and that of Lucy S. Sanderson at least twenty days. I learned he had that of S. W. Reed by service of a notice of suit, of summons and complaint, served on me. I found
48 he had the claim of Lucy S. Sanderson by his telling me so in his office and showing me the note. This interview was after the suit was brought on the Reed claim—a few days; I don't know now how long. I was the principal debtor in the Sanderson claim, but a surety in the other. Thomas G. Barnard, of Minneapolis, was the principal debtor in the Reed claim. Judge Palmer had at that time other claims against me—notes past due; one to Sarah W. Reed for $600, in which I was principal debtor; one to heirs of Mrs. David Sanders for $1,800, on which I was principal debtor; Mrs. Lucy S. Sanderson's claim, in which I was principal debtor, was $2,600, and Mrs. Reed's, on which I was surety, was $5,000; making, in all, $10,000. Interest on all these notes had been paid up to Jan. 1, 1874, by me and by Barnard.

12. Question. What, if anything, did Judge Palmer say to you at that interview about these several claims?

(Objected to as incompetent, irrelevant, and immaterial.)

Ans. He merely told me that they had been placed in his possession; can't say that he told me for what purpose. As well as I recollect, I went to Judge Palmer's office to find out whether the Reed claim
49 was to be pressed against me or to be collected of M'r Barnard. I only learned that the note had been sent to him for collection. I don't know that I knew any more about it after the conversation than I did before. Afterwards, at the same interview, Judge Palmer told me that he had then other claims sent him by the same parties, and showed me the notes.

13. Question. What, if anything, was said in this conversation with regard to your financial condition?

(Objected to as was the last question.)

Ans. Judge Palmer suggested to me that if I was able to give a statement showing a satisfactory condition of my affairs to them, his clients, they might feel less like pushing the suit. I told him I was unable to give a statement at that time, not having taken an inventory of my stock since the year previous, but that I was willing to proceed to take an inventory and to give such a statement as soon as possible. Nothing was said in so many words about my debts. I understood that a statement of my affairs would include that. I think he replied that he would write them what I said.

50 14. Question. What, if anything, was said at that or at any subsequent conversation between you and E. C. Palmer, before judg-

ment on the Reed claim, about withdrawing that suit or delaying any proceedings therein?

(Objected to as was the last question.)

Ans. I asked Judge Palmer if the suit could be withdrawn. He replied that it had been commenced and must proceed to judgment, but thought he saw no reason why execution could not be delayed. The claim of Lucy S. Sanderson was subsequently in the hands of another attorney here, Harvey Officer. I know nothing further about the other two claims. About the 28th day of March, 1874, I ascertained that the Sanderson claim was in Mr. Officer's hands. I learned that by a service of the petition in bankruptcy. This was the first knowledge I had of it. I am personally acquainted with the owners of each and all of the claims which were in Judge Palmer's hands as before stated. M'r's Lucy S. Sanderson and M'r's Sarah W. Reed are sisters. These heirs of M'r's David Sanders are M'r's Sanderson, M'r's Reed, and M'r's Reed's three children. They are the same persons as the Lucy S. Sanderson and Sarah W. Reed before mentioned. They are not related to M'r
51 Barnard. They are no blood relations of my own. My wife was an adopted daughter of a brother of M'r's Reed and M'r's Sanderson.

15. Question. What was the financial condition of Thomas G. Barnard during February and March, 1874?

(Objected to as immaterial and irrelevant; no foundation laid in the bill.)

Ans. To the best of my knowledge he was bankrupt or insolvent.

16. Question. State whether any conversation passed between you and E. C. Palmer, before the Reed judgment, in relation to the financial condition of Thomas G. Barnard? If so, what; and when was it?

(Objected to as was last question.)

Ans. I think I did have such a conversation with Judge Palmer. It was a few days after the service of the summons in the Reed suit. Judge Palmer asked me what condition Barnard was in financially. I replied that he was not able to pay the claim at that time, but that I thought that, if business was ordinarily good he would be able to pay the Reed claim during the summer of 1874. There was nothing more said. I think that settled it. He told me when he served the
52 summons upon me, that he had been to Minneapolis that day and served a like summons upon Barnard. I don't remember that he spoke of Barnard's having said anything. I know who was the sheriff of Ramsey County last spring. It was John Grace. I never saw him in possession of the property I transferred to Combs. I have seen his deputies in the store after that time.

17. Question. State what was the consideration for these debts which are in Judge Palmer's hands for collection?

(Objected to on same grounds as last question.)

Answer. Borrowed money—all of them.

18. Question. State whether or not any of your commercial paper had gone to protest shortly before this Reed suit was commenced, and during the year 1874?

(Objected to as immaterial and irrelevant.)

Answer. I am not able to answer that question positively. Some of my commercial paper had become due in that period, which I was unable to pay. Between the 5th of February and the 14th of March, 1874, some of my commercial paper had become due which I was unable to pay. Between the latter dates one debt had been collected.
53 The deputy sheriff came to my office with an execution against

me for between one and two hundred dollars, which I paid on presentation. During the winter of 1873–4, a part of my property was levied on for a debt of my brother in Minneapolis, on which I was security. His note indorsed by me. I paid that debt—between $600 and $600.

19. Question. State what the sheriff did under that execution against your brother and yourself?

(Objected to as immaterial and irrelevant, and not the best evidence.)

Ans. He first presented the execution, asked if I could settle it. I told him I could not. This was the deputy sheriff Mullens. He then levied on the whole stock, telling me that he should take possession of the stock and place a man in charge of it. I went then with my attorney, M'r Rogers, to see M'r John Grace, the sheriff, and told him I was not able to pay the execution at once, but could do so in a few days, and also that the property in possession of his deputy was very much in excess of a sufficiency to pay the claim. He went with me to the store, and told me he should consider the stock on the 3rd floor only in his possession. This stock on the 3rd floor continued in charge of
54 the sheriff more than a week before I paid the execution. At the time this Reed suit was brought I had no property subject to execution other than the stock and store accounts, nor at any time since. My condition had not changed materially between the service of the papers in the Reed suit and the assignment to Combs. My condition remained substantially the same.

Cross-examined by E. C. Palmer, esq., solicitor for Sarah W. Reed:

Prior to my coming to S't Paul, I had been doing business in Minneapolis. My business experience was first with Thos. G. and John F. Barnard, as "Barnard Bros. and Shuey," then with Thos. G. Barnard, as "Barnard and Shuey," then with Tho's G. Barnard and E. C. Clark, as "Barnard, Shuey and Clark," all in the furniture business. This was from the spring of 1866 to the spring of 1872. During that time we did a large business, and a flourishing one, that we did not fail, and had no trouble. I came to S't Paul in June, A. D. 1872. I commenced the furniture business here at 18 East Third street (new number). The building is three stories and a basement, and about 100 feet deep. I had a shop outside for repairing and upholstering. The shop was
55 about 35 feet square. I put into these buildings, when I commenced, stock to the amount of from $15,000 to $20,000, new stock. I made frequent purchases of stock thereafter to about the extent of $25,000, annually. My original stock was selected by myself, and I think was well selected, this is also true of my subsequent purchases. Goods which I got from the East, I got at fair prices, but goods which I obtained from Barnard and Clark in payment for my interest in Barnard, Shuey and Clark, the prices of them was fixed by contract at the time of the dissolution of Barnard, Shuey and Clark, and were higher than the same class of goods ranged at the time I received them.

I employed five men, including clerk in store. I paid them about $400 a month. I was a single man myself, a widower with one child. My stock was selected, and my business conducted with reference to keeping a first-class establishment—principally retail—wholesale in a few lines of common goods. My percentage of profit was about 25 per cent. My goods were marked at that. I often sold for less. There is a great difference in my business here in S't Paul at different seasons of the year; the good season will run from April 1st to Dec. 1st; the rest of the year one can't make expenses.

I had received of my sister $7,500, which is a part of my in-
56 debtedness of $20,000, referred to in my direct examination. In two notes—on demand, $5,000 at 12%, $2,500 at 10%. I think no time is specified for payment of interest. My sister lives at Minneapolis, and has done so for fully five years. I had paid some interest on these notes—I can't say to what time; I had a sort of open account with her, paid her money and paid bills for her, and what I paid was to be indorsed on the notes. There was, I think, no indorsement in fact made. The balance due her, in interest, to Jan. 1st, 1874, was about $1,400. The National Merchant's Bank, of S't Paul, was my largest creditor next to my sister, amount $2,500; two or three notes I think—three, two of $1,000 each, and one of $500, falling due in April or May, 1874.

In consequence of the lateness of the hour I hereby adjourn this taking these depositions to Saturday morning, Dec. 19th, at 10 a. m.

JOHN Y. PAGE.

Cross-examination resumed Saturday, Dec. 19th, 1874, at 2 p. m.

Present, W'm P. Warner and E. G. Rogers, for complainant. E. C. Palmer for defendant Sarah W. Reed.

57 Witness W'm H. Shuey, cross-examined by E. C. Palmer, saith:

I believe the debt to my sister, M'r's Reynolds, was ascertained and the new notes given in renewal of old ones taken up on Jan. 1, 1874. I guess that was so, if the notes bear that date. I am positive they were renewals; no new debt was contracted then.

I did my business at the Merchants' National Bank of S't Paul. I had an account there from January 1, 1873, to 14th March, 1874. I was in the habit of borrowing money from the bank during that period; made them loans; most of them on my own note. They were from $500 to $1,000 at a time, for 30, 60, or 90 days, usually. Was a subscriber to a mercantile agency, McKellop and Co. I don't remember that I did make any report of my financial condition to that agency. I think I did know my standing at that agency, but I don't remember now. The goods I got each on credit. I bought at two, four, and six months' time. I cannot fix the date of the first execution which came in on me. Between November 1, 1873, and January 1st, 1874. That was my brother's debt to pay. He resided in Minneapolis. He has not reimbursed me for that payment. The claim against him was put into my
58 list of assets in bankruptcy. I paid it out of my own funds.

The sheriff did not take the key of my store at all. He did not that I know of make out any list of articles levied on. He did put a man in charge of the third story. This man did not stay there all the time, only came around once or twice a day. I had access to the 3rd story all the time.

The next matter was that of Newell and Brill—something over $100. This was in February or March, 1874, after the Reed suit had been begun. I paid this upon presentation of the execution.

I had never known E. C. Palmer before he served the summons on me in the Reed suit. Had never had any interview with him, or any communication with him until that time. My subsequent interviews with him were had in his office, and were sought by myself. I believe I put in an answer in the Reed suit. I know I did. (* I did that to delay or prevent the collection of the claim.)

(* This statement is objected to by plaintiff's counsel as incompeten', and not cross-examination.)

I employed counsel in that case. Mr. E. G. Rogers was my counsel. Mr. Rogers drew the assignment to Mr. Combs. I did not make that

assignment to delay or prevent the collection of the Reed claim.
59 I made it that all my creditors might come in share and share alike.

Question by E. C. Palmer for Mrs. Reed. Did you not make that assignment for the purpose, among others, of preventing Sarah W. Reed from collecting her claim in advance of any other of your creditors?

(Objected to as incompetent, and as not being cross-examination and as immaterial.)

Ans. That was one purpose. I asked Mr. Combs, two days before, if he would be willing to take the trust. I told him I was obliged to make an assignment to protect my creditors. I think I told him a suit had been commenced against me for a claim which Mr. Barnard should pay. I had the Reed suit in my mind at the time. Mr. Combs was at that time a bookseller, and continued so to be for several months after my assignment to him. I had two or three keys to the front door of my store. I carried only one. Mr. Sweet, my, clerk had one; the other was in the safe. I was in the building on two or three occasions after the assignment, not every day.

A notice was made out to send to my creditors, notifying them of my assignment; it made no exhibit of my affairs; it did not invite
60 proposals for compromise. This notice was made out in Mr. Combs' store in my presence and also in Mr. Combs' presence. I had not taken or completed any inventory when I made the assignment, and was under weigh at the time. I did not know to a dollar what stock I had on hand. I had no specific knowledge but from my books. I either examined the account on the books when I made the assignment or I had knowledge in my mind of how I stood at the time. I had not computed to a certainty my bills receivable. I had a general but not a specific knowledge of what they amounted to. I had acquired that knowledge after my interviews with E. C. Palmer. These interviews I had with Judge Palmer were all had before I filed my answer in the Reed suit. I don't remember what amount of property I thought I had at the time of these interviews with Judge Palmer.

Re-examined by Wm. P. Warner, for complainant:

I had borrowed this money of my sister, Mrs. Reynolds, some years before I commenced business in St. Paul, and also I was then liable for the $10,000 which came into E. C. Palmer's hands—one-half I owed myself and one-half I was surety for as I have before stated. This
61 was all my indebtedness, substantially, when I opened business in St. Paul. I should think I had at my store as much as $15,000 worth of goods within thirty days after I opened. Most of them were high-priced goods, a large majority of them. In keeping up my stock I ran it in the same proportion of high-priced goods afterwards. I commenced in June, 1872.

Question. State whether there was any panic or decided depression in values at any time after that, and if so, when it began.

(Objected to by Judge Palmer as incompetent and immaterial and not in rebuttal.)

Ans. There was, I think, in the fall of 1872, and again in the fall of 1873.

Question. State whether or not money was unusually tight in this market from and after September, 1872; and whether or not the times have become gradually tighter from and after Sept., 1872, and to the date of your failure.

(Objected to by Judge Palmer as incompetent and immaterial and also as leading.)

Ans. It was, and they did. Money was very tight and very hard to get from Sept., 1872, and to my failure. The difficulty increased to my knowledge.

62 Question. What effect had these times on your business?

(Objected to as incompetent and immaterial, and as calling for the opinion of the witness and not for any fact.)

Ans. The effect was exceedingly depressing. I was obliged on account of that to sell a great many goods at less than cost, so as to convert them into funds, very seldom getting market prices for goods.

Question. State whether or not the quality of goods which you kept were in demand during that period in this market.

Ans. A large majority of them were not in demand; the high-priced goods were not. My notes at the bank were extended during Jan., Feb'y, and March, 1874. I had no new discounts during that time. What I owed the bank was for discounts during 1873. I had borrowed no money of the bank after 1873. My best recollection is, that the sheriff held his levy on the goods in the third story for more than a week. I know it was a week, and I think it was two weeks or over. Combs' store was directly opposite mine at the time of the assignment.

63 I did not retain any key to that store after the assignment. I had use of a key once or twice from M'r Combs. I can't now say why I went there; some trivial errand, perhaps, but not to put anything in or to take anything out. I went in to make a valuation of the property with M'r E. G. Rogers while the sheriff was in possession. This was for the purpose of getting evidence for a suit in the name of M'r Combs against the sheriff, for taking the goods from him. This was what I went there for. There was no inventory in progress at the time of my failure.

Question. At whose instance and for what purpose was that inventory being prepared?

(Objected to as immaterial.)

Ans. At my own instance. It is customary to take an inventory once in so often to get at my exact standing in business. I should have made that inventory any way. I was not having it made for the purpose of giving Judge Palmer a statement, nor did I promise to make him any. I was reluctant to make such a statement, knowing my condition would not warrant me in making a satisfactory statement to him. I did not tell him so.

64 Recross-examined by Judge Palmer:

It is difficult for me to say what proportion of my goods I got from Minneapolis. I should think it was in the neighborhood of a quarter; and, subsequently, about the same proportion; perhaps more. It came upon me gradually after I commenced business, in less than six months, that my high-priced goods were not in demand in this market. I did order some high-priced goods after that, but selected such as I hoped would be saleable.

Question. Did you not, after you discovered that high-priced goods were not in demand in this market, obtain such goods as would, in your judgment, be in demand in this market?

Ans. My answer was: I bought such goods as I hoped to be able to sell. I think that answers the question. Mr. Rogers and I did not take the inventory we went in to take; we did nothing towards it.

Redirect examination by Mr. Warner:

Question. What were your expectations while you were in business in S't Paul, with regard to the market for high-priced goods?

65 (Objected to, as incompetent and immaterial.)

Ans. My expectations were that the demand for them would improve, would increase; that the population of the city demanded them, and no other dealer kept such goods; and I knew a great many such goods had been sold in Minneapolis where I came from.

And further this deponent saith not.

WILLIAM H. SHUEY.

In consequence of the lateness of the hour, I hereby adjourn the taking these depositions until Monday, the 21st instant, at 2½ p. m.

J. T. PAGE,
Master, &c.

Monday, Dec. 21st, 1874, at 2½ p. m. Parties present by attorneys.

WILLIAM S. COMBS, of lawful age, being duly sworn on the part of the plaintiff, deposeth and saith:

My name is William S. Combs; am 44 years of age. I reside in the city of St Paul. I know Chas. W. McIntyre. I am entirely unacquainted with the defendants. I know Wm. H. Shuey, mentioned in the papers in this cause. He had been a dealer in furniture in

66 this city prior to March 14, 1874.

(Paper shown witness.)

I have seen the assignment of which this purports to be a copy. He is the W'm H. Shuey mentioned in that assignment, and I am the William S. Combs mentioned in same. I mean and refer to the assignment mentioned in the pleadings in this cause, executed to me as assignee by W'm H. Shuey.

1. Question. State whether or not this assignment was ever delivered to you; and, if so, when, and by whom.

(Objected to by counsel for Sarah W. Reed, as incompetent, immaterial, and irrelevant, and because said assignee is bankruptcy is estopped from claiming under this assignment in this cause.)

Ans. It was delivered to me in the morning of the 14th day of March, A. D. 1874, about 9 o'clock in the morning, by William H. Shuey—between 9 and 10 o'clock. Mr. E. G. Rogers, Mr. Shuey, and I were present when it was delivered to me. I went into his place of business, the furniture store on 3rd street, and took possession of all the stock, furniture, and materials stored in the three stories of the building, and in the work-room on Bench street in the rear of the store; also in the basement; also into his office, and was placed in possession of his

67 safe, of his books of account, and of his bank-book. I employed Mr. Sweet, the former employee of Mr. Shuey, to act as my agent and clerk. I then left the store and went to the Merchants' National Bank, where I had the account of W. H. Shuey transferred to me as his assignee. This was completed between 10 & 11 o'clock on the same day. At about 1 o'clock (my office being right opposite Mr. Shuey's former place of business) Mr. Sweet informed me that Mr. John Grace, sheriff of Ramsey County, had levied upon my property. I immediately went over, saw Mr. John Grace in the store-room, who informed me that he had made a levy on the stock. The sheriff then took possession of the store and contents; I went over the premises, all of them, with the sheriff, and he took possession of everything, including what was in the wareroom on the back in the rear. The sheriff took one key of the store and let me have the other. I left him there in possession of and in charge of the store.

Question. State which, if anything, was said at that time by you or by the sheriff, in regard to this assignment by Shuey to you?

(Objected to as incompetent and immaterial.)

68 Ans. I simply stated to the sheriff that M'r Shuey had made an assignment of that property to me, and showed him the deed of assignment. I asked him how he could have gotten possession had the door been locked. He said his instructions were positive to take possession, and he would have gone through any lock I could have put on it. That is about the end of my conversation with the sheriff. There was no sheriff about the premises to my knowledge at the time *of* the assignment was delivered to me. The sheriff never surrendered any of this property to me at any time afterwards. I surrendered the key of the store to the United States marshal some time afterwards.

Question. State whether or not the sheriff took this property from you against your will?

(Objected to as incompetent and immaterial, and as calling for the opinion of the witness.)

Ans. It certainly was against my will.

Cross examined by E. C. Palmer, solicitor for M'r Reed:

M'r Shuey and I had a conference about this assignment before it was made—on the afternoon of March 13th.

69 Question. Did not M'r Shuey tell you at that time, that he wished to make an assignment in order to prevent collection of a claim lately put in suit against him?

(Objected to by M'r Warner as not cross-examination.)

Ans. He did not. He did state that he could not pay his liabilities, and that there was a suit pending, which, when judgment was obtained, and if a levy under execution was made, would prevent his property being shared alike by all his creditors; and that he wished to prevent, and to have all his creditors share and share alike.

This assignment was handed to me in the office of E. G. Rogers, now present, then M'r Shuye's attorney. I was a bookseller and stationer on the 14th of March last, and had been in that business for 24 years. The bank account was less than twenty-five dollars. It was at the Merchants' National Bank. The bookkeeper at the bank made the transfer to me as assignee, and gave me a pass-book in which I drew checks afterwards. This was done under the direction of Messrs. Mann and Mirriam, the vice-president and cashier. I told M'r Sweet I was in the possession of that stock, and would like to employ him as my clerk and agent, as he was more familiar with the stock and business than

70 I was. I would pay him the same salary that M'r Shuey had paid him, and that he was to transact no business without informing me of the nature of it. I had at that time no interview with any other employee. The workmen in the shop continued their work until they were stopped by the sheriff; M'r Shuey gave me three keys, I think; I gave one to M'r Sweet and kept two myself; I went back then to my own store after returning from the bank; when I went into the store with the sheriff, and at that time he and I made an arrangement by which the men were allowed to go on with the work on hand; after that time I had a key of the store, and had access to the store; the sheriff had a key and M'r Sweet had a key; I mean to say this, M'r Shuey gave me three keys of the front door; I gave one of them to M'r Sweet, I gave the second one to the sheriff after he had made this levy, retaining the third; subsequently I gave up the key I retained to the United States marshal; I went with him to the store and gave it up,

and dissolved my connection with the matter, and have had nothing to do with it since.

Re-examined by plaintiff's attorneys:

71 I knew that for some time after making the levy the sheriff had a man in charge of the store night and day; this was so to the best of my knowledge and belief.

In answer to question by E. C. Palmer, witness said: All I know about the sheriff's having a man in charge night and day is what the sheriff and his deputy told me.

And further this deponent saith not.

WILLIAM S. COMBS.

EDWARD G. ROGERS, of lawful age, being duly sworn on the part of the plaintiff, deposeth and saith:

My name is Edward G. Rogers, reside in S't Paul, and am thirty-two years of age; I know W'm H. Shuey, W'm S. Combs, Charles W. McIntyre, and E. C. Palmer, mentioned in the pleadings in this cause. The assignment from Shuey to Combs, mentioned in the pleadings herein, was drawn up in my office; it was signed in my office by W'm H. Shuey and W'm S. Combs on March 13th, 1874; I believe in the afternoon or towards evening of that day; I was present when the assignment was delivered.

Question. When and where was it delivered, and state what was done in that behalf.

72 (Objected to by E. C. Palmer on same grounds as urged to a similar question to Mr. Combs.)

Answer. The assignment was handed to M'r Combs by M'r Shuey, in my office, between 9 and 9½ o'clock a. m. on March 14th, 1874. M'r Shuey, M'r Combs and I were present, and we all then went immediately together to the store of M'r Shuey. We went first on the first floor of the store. M'r Shuey pointed out the property, and told M'r Combs this was the property he delivered to him under the assignment. Then we went into the basement, and he, Shuey, did the same thing there; also to the 2d and 3d floors, and M'r Shuey went through the same forms there. Then we went into the workshop in the building on Bench street, into each room, and the same conversation occurred. Some property in a hallway was also pointed out. Then we went into the office, and M'r Shuey put M'r Combs into possession of the books, accounts, safe and contents, and keys, &c. M'r Sweet was then called into the office. M'r Combs told M'r Sweet that the property had been assigned to him, and that he had taken possession of it, and that he would like him as his clerk, and would allow him the same wages Shuey had allowed

73 him, $90 a month for the present. M'r Combs told M'r Sweet, also, that any business he should do he must consult him first. My impression is thatI went at once over to the court-house from the store. I saw Judge E. C. Palmer at the court-house. This was about 10 o'clock of the same day.

Question. What conversation took place between you and M'r Palmer?

(Objected to as incompetent and immaterial and irrelevant.)

Answer. I told Judge Palmer that M'r Shuey had made an assignment. Jas. Mullins, the deputy sheriff, was standing by, and heard what I told Judge Palmer.

(This reference to Deputy Mullins is especially objected to by defendant's counsel.)

Judge Palmer asked me to whom Shuey had made an assignment. I said "To W'm S. Combs." Judge Palmer asked to what Combs. I said to Combs, the bookseller.

The Reed judgment had not been entered at that time. I mean judgment in the case of Sarah W. Reed ag'st Barnard and Shuey had not been entered at that time. We had just argued the motion to strike out the answer, and Judge Palmer was at the time of this conversation drawing the order for judgment in that case by the direction of
74 the judge of the district court. The order for judgment was not signed until after that conversation.

Cross-examined by E. C. Palmer:

I was attorney for M'r Shuey in defending this Reed suit against him. I went over to the court-house for the purpose of arguing in opposition to your motion to strike out the answer in that case.

When M'r Shuey, M'r Combs, and I went into the store together, M'r Shuey only pointed out the property there generally. He did not take hold of any specially. There was no property of any one else there that I know of. M'r Combs did not take hold of any of it. We went around the different parts of the room. We had no inventory, none had been made at that time that I know of. There was never any of all the property, so far as I know, until after McIntyre, the assignee in bankruptcy, took possession. Neither M'r Shuey nor M'r Combs made any inventory of the property that I know of; none was made in connection with the assignment.

And further this deponent saith not.

EDGAR G. ROGERS.

In consequence of the lateness of the hour and for the conve-
75 nience of counsel, I adjourn the taking these depositions to Monday, Dec. 28th, at 2 p. m.

JOHN T. PAGE,
Master.

In consequence of *criminal* being otherwise engaged, the taking the depositions in the foregoing cause was delayed after Dec. 28th, 1874, until June 7th, 1875, at 2 p. m.

JOHN T. PAGE,
Master.

JUNE 7TH, 1875.

Examination of witnesses resumed.

CHARLES W. MCINTYRE, sworn on the part of the plaintiff, deposes and says:

Was assignee in bankruptcy of W'm H. Shuey, and am still. Was acquainted with the stock of Shuey. It came eventually into my hands and I disposed of it.

Question. How did you dispose of it, at public or private sale?

(Objected to by defendant's (M'r's Reed's) counsel as immaterial; the assignee in bankruptcy is estopped from claiming the property levied on, or any part thereof, as against the defendant Reed.
76 Counsel for M'r's Reed also objects to the taking the testimony of this witness on the ground that the court has not obtained jurisdiction of the defendant, Lucy S. Sanderson.)

Answer. For the first thirty days I disposed of it at private sale under

order of the court, at or as near cash as I could get, or as it would bring; what remained I sold at auction.

Question. How much did you realize from the sales?

(Objected to as immaterial, and as with the measure of damages.)

Answer. $10,659.00.

Question. How much did you realize from the accounts and demands due W. H. Shuey?

(Objected to as immaterial.)

Answer. $420.47.

Question. How much have you realized from the estate of W'm H. Shuey altogether?

(Objected to as immaterial.)

Answer. These two sums. The uncollected dues and demands do not exceed $1,500, and are on their face somewhere between $1,000 and $1,500. I can't collect over $200 of these; not more collectible.

77 I received the property, part of it from United States marshal, and part from the sheriff of Ramsey County, all of it from one or the other. Notice of the auction sales was given in the newspapers and by placards, and sold by R. and J. M. Warner, professional auctioneers.

Cross-examined by Judge Palmer:

I received from the sheriff part of this property under a stipulation on file in this action, or in the bankruptcy proceeding against W'm H. Shuey. The stipulation signed by Judge Palmer and myself.

(It is stipulated between the parties to this action that such stipulation and all the papers on file in this action and in the bankruptcy proceedings against W'm H. Shuey shall be considered as offered and received in evidence, subject to any objection to their relevancy or materiality, or for anything except the form in which they are presented, and shall be so far considered a part of the report of the master.)

And further the deponent saith not.

C. W. McINTYRE.

JOHN GRACE, produced on the part of the complainant, and

78 being duly sworn, deposeth and saith:

Am sheriff of Ramsey County, and have been during the last two years and longer. Was such sheriff at time an execution was levied on property in W'm H. Shuey's store; made the levy on the property as the property of W'm H. Shuey. I don't know whether it was his or not. (The counsel for the defendant, M'r's Reed, objects to the testimony of this witness on the ground that the court has not obtained jurisdiction of one of the defendants, M'r's Sanderson, and therefore no testimony can be taken in the cause.)

Question. At whose request did you make such levy?

(Objected to as immaterial and irrelevant, and because the assignee in bankruptcy is estopped from claiming any portion of the goods levied on by the witness under any right or claim of W'm S. Combs.)

Answer. At the request of E. C. Palmer, esq. He told me he wanted me to make a levy on the goods of that party, W'm H. Shuey. I did not get a bond of indemnity before I levied.

(The testimony of this witness and every part thereof is taken subject to the objections stated above.)

79 I went over to Shuey's store; I found a young man there. It was not shut up. A young man named Sweet, I think, a red-headed man, who, a day or two before, had been clerking for Shuey. I asked him for Shuey. He told me Shuey was out, and that he would

be in perhaps in an hour. I told him then I had an execution against Shuey's property, and I came there to make a levy. I did make the levy. I told him that I levied on all that property. He told me the property belonged to W'm S. Combs—that Shuey had made an assignment. He went over after W'm S. Combs to Combs's store on the opposite side of the street. M'r Combs came over and told me he had got the papers for that property that morning, and that Sweet was working for him. A portion of the property was afterwards released, and the rest I turned over to Charles W. McIntyre, as assignee in bankruptcy. An injunction was served on me by the U. S. marshal. There were two demands made on me for this property—one by W'm S. Combs, assignee of W'm H. Shuey, and one by C. W. McIntyre, assignee in bankruptcy. These were in writing, and served on me by E. G. Rogers, esq.

80 Cross-examined by Judge Palmer:

Mr. Shuey had been in business about a year, I think, at that place before I made that levy. The store was full of goods. I had heard something about an assignment before I went there; did not know one had been made. I had heard that he had made an assignment, or that he was about to make one—something of that kind. I went around the store, up and down three stories, I think, and also into the other building or shop, when I made the levy. I took the key of the store. Combs gave that to me. I retained my levy on those goods, except those which were released, until I surrendered them to Mr. McIntyre. The writ of injunction was served, I think, a week or two after my levy. I've known W'm S. Combs here in S't Paul for 14 or 15 years. He was a book-seller and stationer during the whole time. He had not dealt in furniture, so far as I know.

Re-examined by Mr. Warner:

I kept all the keys. I took a man there to make an inventory, and got Sweet to help him. I told Combs I would take possession of the store, and he then gave me the key. He had one key and Shuey
81 had another. I got it from him. I think there were three keys, and I got them all.

JOHN GRACE.

(Papers marked "Exhibit A" offered in evidence by complainant; also paper marked "Exhibit B."

Objected to by defendant's counsel as irrelevant and immaterial, and that it is incompetent for the assignee in bankruptcy to prove any demand for said property made by said W'm S Combs, or to claim under any such demand in this suit, and because the court has not obtained jurisdiction against Mrs. Sanderson.

Defendant's counsel waives any objection to these papers on the ground that they are copies.)

Adjourned by consent to Monday, June 14th, at 2 p. m.

And further adjourned to Thursday, June 22d, 1875, at 7½ p. m.

At which time the taking of evidence on the part of the defendant, Sarah W. Reed, proceeded as follows:

E. C. PALMER, being duly sworn, deposeth and saith:

82 I am the E. C. Palmer, attorney of record for defendant, Sarah W. Reed. The note on which that action was brought came into my hands about Feb'y 1, 1874. I immediately made out the summons and complaint, and on Feb'y 5th, I think, I went to Minneapolis and served the summons and complaint on M'r Barnard, one of the defend-

ants in that action. That same day, after I returned from Minneapolis, I served the summons and complaint on the defendant W'm H. Shuey. Until that day I had never seen, that I know of, M'r Barnard, and had no personal acquaintance with M'r Shuey. I had known that he was in business in S't Paul, at No. 18 East Third street, and had noticed the kind of business he was engaged in.

Some few days after the action was begun, M'r Shuey came to me and wanted to know whether I intended to press the suit to a judgment. I told him it was my intention to go on with the claim in the regular course of business. He wanted I should wait, asked me to wait, and I declined to do so. He saw me once after that, I think, and not very long before the period for answering would expire. He made the same request then that he did at first. At that time I had received the
83 three notes referred to in his testimony other than the one on which the action was brought, and which I did not have when he saw me first or when the action was commenced. He mentioned at this second interview the indebtedness of a note $10,000, and wanted to know why I had brought an action on the note on which he was surety and not on the other on which he was principal. I told him that when I brought the action on the first note I did not have the others, and that I had received no instructions to commence suit on the others after I did get them. He again wanted to know if some arraignment could not be made with reference to the note on which suit had been brought. I asked him if he would make me a statement of his affairs how he stood, the amount of stock he had, &c. He said he had no objection except for the time it would occupy to take an inventory; that he had taken no inventory for a year or more. I think these two interviews were the only ones I had with M'r Shuey prior to the entry of judgment against him in the action. He may have come in again, but I don't now recollect his doing so.

I left town for Duluth about the 22d of February, I should
84 think. I was not here when the period for answering expired. When I returned I found an order extending the time for answering, granted upon the affidavit of M'r Rogers, M'r Shuey's attorney.

Some few days after that an answer was served, which is contained in the judgment-roll in the action. I immediately made a motion for judgment, notwithstanding the answer to be heard on the 14th day of March, 1874. That motion came on and was submitted, M'r E. G. Rogers appearing for M'r Shuey; motion was granted, and I sat down to draw an order. While I was drawing the order, M'r Rogers remarked that he did not care anything about it, as M'r Shuey had just made an assignment. I have no recollection of asking M'r Rogers who the assignee was, or of having any conference with him about it. Judgment was entered in compliance with that order that same day. Execution was immediately taken out and placed in the hands of M'r Grace, and he was directed by me to levy on M'r Shuey's property. Some few days after the 14th, M'r A. D. Sanders, of North Hampton, Mass., came here and had several interviews with me on the matter of Shuey's business; he was the person who had sent me the note on which the action was brought,
85 and who had subsequently sent on the other notes.

After having had several interviews with M'r Shuey, as he (M'r Sanders) told me, he wanted to know what could be done with the other three notes which I then had in my possession, saying that they belonged to two other parties whom he represented, and whose interests he desired to take care of. As I was about leaving town for New York,

I told him that I could not either act for him nor advise him, and that he had better see some other attorney. He asked me whom I would recommend, and I told him Harvey Officer. I gave him the three notes and left S't Paul for New York about March 19th or 20th, as well as I recollect. I was absent in New York, Washington City, and Chicago, until about the 1st or 2d of April. I had no agency in procuring the institution of the proceedings in bankruptcy, directly or indirectly, at the time the action was commenced by me, and when judgment was rendered, I had no knowledge of M'r Shuey's affairs other than looking at his store.

Cross-examined:

86 I think M'r Sanders sent the first note either to the First National Bank or directly to me. It came by mail. I don't know whether I have the communication which came with it. It is not among the files. I think the instructions were to collect the note. I think nothing more was said about Shuey or about the nature of the transaction; whether to sue or not was left much to my discretion, but something definite was to be done. What instructions there were came from A. D. Sanders. I think the other three notes came direct to me, either by express or by mail, also from A. D. Sanders. He claimed to represent the owners of all the notes. After the suit was brought, and after he came here, he did not claim to interfere with proceedings in reference to the first note. I think I wrote to Sanders or telegraphed him, I don't know which, after the levy and before he came on, and I think I telegraphed him to come on. M'r Shuey asked me repeatedly to have Sanders come on here before I wrote or telegraphed him. Shuey expressed himself to me as confident that if M'r Sanders came out here an arrangement could be made with him in reference to his (Shuey's) indebtedness.

I don't think any instructions came out with the other three notes.

87 I think they were sent out to see what could be done with them, much as the first was. They came two or three weeks after the first, not very long before judgment, as I recollect. I don't think I considered the matter especially why I did not bring suit on these three notes. I had no especial instructions on the subject, and did not think much about it. I had no interview nor any communication with M'r Officer after he got the three notes into his possession and while he was preparing the petition in bankruptcy. I think M'r A. D. Sanders was yet here when I returned from the East. I presume I met him and was informed what was done. I gave him no advice and had no professional connection with him about these three notes. The other matter was within my exclusive control. I had received no farther than those I got originally in regard to the first note.

E. C. PALMER.

HARVEY OFFICER, being duly sworn on the part of the defendant, Sarah W. Reed, deposeth and says:

88 Am an attorney-at-law. Have been for twenty years. Have practiced so long in Saint Paul. In the latter part of March, 1874, M'r A. D. Sanders came into my law-office in S't Paul and introduced himself as the representative of certain claims against one W'm H. Shuey, of S't Paul, who had then recently made a general assignment for the benefit of his creditors. M'r Sanders asked me if I represented Mr. Shuey as attorney or counsel, or if I represented claims against him. I told him I did not represent him, and then had no claims against him. He told me that Judge Palmer had recommended

me to him, and that he would like to talk with me about the claims which he represented. He stated that these claims were owned by certain friends or relatives (I can't say which) of M'r Shuey's, and that these parties resided in the State of Massachusetts; that Judge Palmer was attorney for one of the claims; that he (Judge Palmer) had put that claim in judgment, and had caused an execution to be issued therein, and that the sheriff had levied the same on M'r Shuey's stock in trade; and that it was probable there would be a conflict between the assignee and that execution creditor; that Judge Palmer had advised him under the circumstances to take the advice of some other attorney as to the other claims, and that he had come to me on Judge
89 Palmer's recommendation. He also informed me that Judge Palmer had left for the East to be gone some time. I had heard before this of the fact of the assignment from street rumor; but this was the first time that I had heard of the judgment against Shuey, or the execution or levy thereunder, or of these other claims.

M'r Sanders then stated that he was in hopes that some arrangement might be made with M'r Shuey; that he wished to see him himself, and see if some arrangement could not be made before taking any further proceedings. He had some further conversation in regard to what proceedings would be necessary in case bankruptcy proceedings would be necessarily resorted to. He then told me to regard myself as retained, and said he would call again.

About March 30th M'r Sanders called at my office and informed me that he had made no progress towards a settlement with M'r Shuey, and handed me a note, which he stated was the property of one Lucy Sandman, of Massachusetts, and who, I think, was the payee of that note for about $2,600 or thereabouts, and spoke of instituting proceedings in bankruptcy aghinst M'r Shuey, the maker of the note.
90 I told him, or advised him, that if the execution and levy should be held to be good, that it would necessarily conflict with M'r's Sanderson's claim, and with the claims of other creditors in the bankruptcy proceedings, and, further, that if proceedings in bankruptcy were taken, that the petitioning creditor should ask for an injunction against M'r Shuey and his assignee, and that it might also be necessary in the progress of the proceedings to enjoin a sale under the levy of the execution, but that this latter need not necessarily be taken immediately inasmuch as the adjudication in bankruptcy would probably take place before a sale under the execution. He then delivered me this note with instructions to take such proceedings in bankruptcy as I had advised, and thereafter to represent the claim of M'r's Sanderson in all subsequent proceedings. On the same day, or the day thereafter, I prepared the petition in bankruptcy, and the proof of the claim of the petitioning creditor, and the affidavit for injunction. Went with M'r Sanders to the office of A. Edgerton, esq., register in bankruptcy. He verified the papers before the register. I then went before Judge Nelson
91 and got the orders to show cause and the injunction against Shuey and his assignee.

The morning after that I met Judge Palmer on the steps of the old court-house, and informed him that I had taken proceedings in bankruptcy against M'r Shuey, and that I thought that the interests of my client would necessarily conflict with his levy, and that we proposed to try that levy on. Judge Palmer replied, "Well, can't help it; I propose to have that levy stick if I can." I think that was the substance of all the conversation I had with him, and this was the first time I had seen Judge Palmer after his return, and was the only communication or

conversation I have had with him or from him from the time of my first connection with the matter in any way. The day after that, or in the afternoon of the same day, M'r Geo. L. Otis called at my office and stated that he represented a claim against M'r Shuey; that he was informed that I had taken proceedings in bankruptcy against him, and suggested the propriety of immediately filing a petition for an injunction against the sale under the execution levy. I told him that I agreed
92 with him that a sale should be so prevented, but I had thought best not to proceed before the adjudication, the hearing on the order to show cause having been set before sale could take place under the levy. But that if he thought best I would join with him in getting up a petition, but could not attend to it that day, as other professional engagements would prevent. He then said he would think the matter over and would call and see me about it the next day.

He did not call upon me the next day, and the day following that I saw him in the court-house, and told him that I would like to talk with him further about the petition in the Shuey matter. He then informed me that he had already filed his petition for an injunction, and that an adjudication had been obtained against M'r Shuey on his own confession, which was the first knowledge I had of that fact.

Question. State whether or not you took any of the proceedings in bankruptcy against said W'm H. Shuey with any intent or purpose on your part to aid said execution levy.

(Objected to by complainant's counsel as incompetent on the
93 question of intent, and on the ground that a party is presumed to intend the natural as well as necessary consequence of his own doings, and that those doings alone and the attending circumstances are the only competent evidence of the party's purposes and intentions.)

Answer. I did not.

Question. State whether or not E. C. Palmer said or did anything, to your knowledge, to procure the institution of said proceedings in bankruptcy.

(Objected to as not calling for what he said and did, that is the facts.)

Answer. I have no knowledge or information as to what advice or counsel Judge Palmer may have given to M'r Sanders, before Sanders' first interview with me; at that interview M'r Sanders asked my advice, and I did advise to the course that I afterwards took as being, in my judgment, for the best interests of my client, and those proceedings were not taken upon the advise of, or at the instance of, said E. C. Palmer. Said Palmer did nothing, to my knowledge, to procure those proceedings.

Cross-examined by M'r Warner:

94 I had not two interviews with M'r Sanders before the inception of the bankruptcy proceedings, and they were 3 or 4 days, or possibly a week, apart. I think I advised bankruptcy proceedings at the first interview as being the only recourse they had. I advised him that I thought it the best opportunity the creditors would have to test the validity of the levy. We did not decide upon any course then, because he wished to see whether he could not make some arrangement with Shuey. Mr. Sanders did not at any time expressly direct me to take any steps to set aside the levy in those very terms, but he gave me full authority to do what I thought best in that and all other respects to protect the interests of my client, and without any directions to consult or advise with any other person. I did not at any time file any petition or take any steps to test the validity of that levy except that upon a

hearing of a motion to dissolve the preliminary injunction which had been issued upon the petition filed by Geo. L. Otis in behalf of the Merchants' National Bank. I did appear upon said hearing and listen to the arguments of counsel pro and con, but took no part in such argument.

95 Question. Why did you take proceedings to enjoin the assignee, Wm. S. Combs, and not the sheriff?

Answer. For the reason that I knew at least five days must intervene between the filing of the petition in bankruptcy and the adjudication therein; and in that time it would have been possible for the assignee (Combs) to have settled with the execution creditor, and sold a portion, if not all, of Mr. Shuey's assets, and I thought it best to prevent that possibility.

Quettion. Did Mr. Sanders ever ask you to do anything to prevent the assignee, Wm. S. Combs, from settling with the execution creditor, Mrs. Reed?

Answer. No, sir.

Question. Why did you then try to prevent that?

Answer. I did not try to prevent it, and have not so stated.

Question. Did you advise Mr. Sanders, before the inception of the bankruptcy proceedings, that the assignment to Wm. S. Combs would be overreached or set aside by the bankruptcy proceedings?

Answer. I did advise Mr. Sanders that that assignment was an act of bankruptcy, and would be void as against the proceedings in

96 bankruptcy from the moment of the adjudication.

Question. Did you advise him that in that event the sheriff would hold the property on which he had levied?

Answer. I did not. I did advise him that the question of the validity of the levy must depend to a certain extent upon the facts attending the levy and the proceedings under the assignment; that I was not then advised of such facts sufficiently to give an opinion as to the result. But the best way to test the conflicting rights of the parties would be in the bankruptcy proceedings.

Question. Did he not explain to you what the sheriff and the assignee had respectively done?

Answer. He did not. He stated that he understood there was a conflict as to whether the assignee had taken possession when the sheriff made the levy, but he did not know the facts in the case.

Question. Did you not investigate what those facts were before the inception of the bankruptcy proceedings?

Answer. I did not make any investigation whatever of the facts before that time.

97 Question. Referring to the conversation as to which you have testified between Judge Palmer and you on the steps of the old court-house, state whether you and he were alone, or whether others were present at it.

Answer. I have no recollection of any other person being present, though there may have been.

HARVEY OFFICER.

I, John Y. Page, master in chancery, do hereby certify that the witnesses above named appeared before me at the times and at the place mentioned, in the presence of the solicitors of the respective parties; were by me first duly sworn, and their testimony by me reduced to writing; the same was read to each witness in the presence and by him signed in attestation and approval thereof; that the Exhibits A, B, and C are

the ones referred to, and were each of them received by agreement of counsel; that the stipulations were signed by counsel, and furnished me in the presence of each other; that the foregoing is a full and true statement of all that took place before me.

JOHN Y. PAGE,
Master in Chancery.

Master's fees, 181 folios, @ 20c	$36 20
Per diem, 3.00, 7 days	21 00
Exhibits, 3, 25c	75
	$57 95

98 District court, second district.

STATE OF MINNESOTA,
Ramsey County, ss:

SARAH W. REED
against
THOMAS G. BARNARD AND WILLIAM H. SHUEY.

STATE OF MINNESOTA,
Ramsey County, ss:

William S. Combs, of the city of Saint Paul, in said county, being duly sworn, deposes and says:

That he is the legal owner of the property and all of the same levied upon by John Grace, sheriff of said county, under and by virtue of a writ of execution in the above-entitled action, and which said property is fully set out and described in a schedule hereto attached, and made a part of this affidavit, and marked "Exhibit A," and which said levy was made by said sheriff on the 14th day of March, A. D. 1874, at one o'clock and fifty minutes in the afternoon of that day, as appears by a copy of said execution hereto attached, and inventory as aforesaid hereto attached, said execution being marked "Exhibit B," and as duly certified by said sheriff.

99 Deponent further says that said property so levied upon as aforesaid is of the value of ten thousand dollars; and that the grounds of deponent's title to said property and right to the possession of the same is that, on said fourteenth day of March, A. D. 1874, before the hour of one o'clock and fifty minutes in the afternoon of said day, to wit, at the hour of nine o'clock in the forenoon of said day, and long before the said levy was made as aforesaid, the defendant, William H. Shuey, in said action, executed and delivered to this deponent a general assignment and transfer of all his property, including the property so levied on as aforesaid for the benefit of his creditors without preference to any, a copy of which assignment is hereto attached, marked "C," and made a part hereof. That of said assignment and transfer as aforesaid the said sheriff was duly notified before said levy was made or attempted to be made by him.

And deponent further says that immediately upon the delivery to him of said assignment and transfer as aforesaid, to wit, at the hour of nine o'clock in the forenoon of said March 14th, 1874, this deponent took

100 possession of the property so assigned to him, and including the property and all of the same so levied on as aforesaid, and hath ever since kept and maintained such possession, except as such possession has been interfered with by said sheriff under the said writ of execution as aforesaid.

And further deponent saith not, except that he claims the said property and all of the same so levied upon as aforesaid; and that he is the owner and entitled to the possession thereof; and hereby protests against a sale of any part thereof by said sheriff, under or by virtue of said writ of execution in the above entitled action or otherwise; and demands of said sheriff that he desist from said sale, refrain from further interference with said property, and at once surrender the possession thereof to this deponent.

WILLIAM S. COMBS.

Subscribed and sworn to before me this 4 day of April, A. D. 1874.
[SEAL.] E. G. ROGERS,
Notary Public, Ramsey County, Minnesota.

101 STATE OF MINNESOTA,
County of Ramsey:

Second judicial district.

The State of Minnesota to the sheriff of the county of Ramsey:

Whereas judgment was rendered on the 14th day of March, in the year 1874, in an action in the district court of the second judicial district of the State of Minnesota, for the county of Ramsey, between Sarah W. Reed, plaintiff, and Thomas G. Barnard and William H. Shuey, defendants, in favor of said plaintiff, and against said defendants, for the sum of five thousand one hundred and twenty and $\frac{45}{100}$ dollars, as appears by the judgment-roll filed in the office of the clerk of said court, for said county of Ramsey.

And whereas, said judgment was docketed in your county on the 14th day of March in the year 1874, and the sum of five thousand one hundred and twenty and $\frac{45}{100}$ dollars is now actually due thereon.

Wherefore, you are commanded to satisfy the said judgment, with interest, and your fees, out of the personal property of the said judgment debtors, or either of them within your county; or if sufficient personal property cannot be found, then out of the real property in your county belonging to the said judgment debtors on the day when
102 said judgment was so docketed in your county, or at any time thereafter, not exceeding ten years, and return this execution within sixty days after its receipt by you, to the clerk of the district court, second judicial district, county of Ramsey.

Witness the honorable Wescott Wilkin, judge of the district court aforesaid, at St. Paul, this 14th day of March, in the year of our Lord 1874.

[L. S.] ALBERT ARMSTRONG, *Clerk*,
By JAS. O'BRIEN, *Deputy Clerk.*

E. C. PALMER,
Pl'ff's Attorney.

(Indorsed:) Execution No. 8099. District court second judicial district, county of Ramsey. Sarah W. Reed *vs.* Thomas G. Barnard and Wm. H. Shuey. E. C. Palmer, attorney for plaintiff.

STATE OF MINNESOTA,
County of Ramsey, ss:

I certify that the within is a true copy of the original execution now in my hands for service.

JOHN GRACE,
Sheriff of Ramsey County.

103, 104 A.

STATE OF MINNESOTA ET AL.,
County of Ramsey, ss:

I certify that I have on the 14th day of March, A. D. 1874, at one o'clock and fifty minutes in the afternoon of that day, by virtue of an execution, of which the within is a true and certified copy, levied upon the following described goods and chattels, in the second and third floor in the store No. 18 East Third street, in the city of St. Paul, Ramsey County and State of Minnesota, as the property of the within-named defendant, William H. Shuey, described as follows, to wit:

One medalion set, in cotton (parlor); one grey hair-cloth set, do.; one brown and blue set, do.; one red-silk set and covers, do.; one brown satin set, do.; 1 green rep set, do.; 1 oval-back set, in cotton, do.; 1 square-back set, do.; 1 green cashmere set (parlor); 1 brown rep set, do.; 1 blue cashmere set, do.; 1 square-back green rep set, do.; 1 oval-back set, in frame, do.; 1 medalion-back set, in frame, do.; 1 black satin chair; 1 Turkish sofa, in cotton; 2 Turkish easy-chairs, in cotton; 1 Turkish do.; 1 over-stuffed, do.; 1 round-end divan, do.; 1 square-end divan, do.; 1 red rep easy-chair; 1 green, do.; 1 brown, do.; 1
105 red rep patent rocker; 1 green rep Turkish easy-chair; 1 brown rep do.; smoking-chair, in cotton; 1 oval-back green rep sofa; 1 satin lounge; 1 open-back divan, in cotton; carved-back reception chair; 1 square set pat. rocker; 1 round do.; 1 blue rep sewing chair; 1 revolving library-chair, in leather; 1 library do., in leather; 1 red plush Wilson chair; 5 oval-back hair-cloth easy-chairs; 2 hair-cloth rockers; 1 hair-cloth parlor chair; 4 brown rep chairs; 1 parlor-chair, in cotton; 2 blue fancy chairs; 1 silk and satin chair; 2 fancy chair frames; 1 cane library-chair; 2 ash and walnut bureaus; 5 ash and walnut wash-stands; 1 ash and walnut wash-stand, moulded; 3 walnut wash-stands; 9 butternut wash stands; 1 butternut and walnut do., moulded; 11 butternut teaspois; 7 ash and walnut do.; 4 ash and walnut glass-frames; 1 Berry (No. 1) glass frame; 2 ash and walnut do.; 2 walnut do.; 1 walnut teapois; 4 large walnut centre-tables; 6 small do.; 2 walnut side whatnots; 1 walnut corner do.; 2 walnut writing-desks; 3 walnut hanging hatracks; 3 walnut stands; 2 ash and walnut French bedsteads; 1 walnut do.; 2 walnut and Berry do.; 4 ash and walnut do., and 1 walnut do.; 2 walnut gothic do.; 1 gelamiskey do.; 23 cane office-chairs; 10 cane-seat office-chairs; 1 spring and swivel office-chair; 4 cane-
106 seat chairs; 1 Turkish chair-frame; 35 small rockers; 1 spring hair mattrass; 1 hair do.; 5 wool do.; 20 cotton and wool pillows; 3 feather do.; 3 cotton bolsters; 1 banner sign; 6 window curtains, fixtures; 3 linen covers; 4 walnut chamber sets; 1 oak and walnut do.; 1 French bedstead and glass frame; 4 walnut French bedsteads; 1 wood-top chamber set; 1 ash and walnut French bedstead; 6 walnut wash-stands; 1 walnut bureau; 1 walnut glass-frame; 7 small marble-top tables; 1 small marble-top table-frame; 1 inlaid-top music stand; 2 walnut music-stands; 1 marble top wash-stand and commode; 1 walnut chamber set; 2 walnut French bedsteads; 2 ash and walnut chamber sets; 1 walnut and ebony chamber set; 1 walnut chamber set; 16 small walnut tables; 1 square ottoman frame; 5 walnut cane rockers; 1 square library-table; 1 carved library do.; 1 Chinese work-table; 1 carpet bed-lounge; 1 rep bed do.; 1 brown-and-blue lounge; 1 pillow-lounge, in cotton; 1 small pier-glass and brackets; 2 large pier-glasses and bases; 1 large mantel-glass and brackets; 4 bureau marbles; 9 wash-stands do.; 2 walnut quartette stands; 1 Tennessee marble, for pier-glass; 6 large mar-

ble-top tables; 1 round Venice-top table; 1 oblong do.; 1 inlaid and rose-
wood table; 1 marble-top gold-leaf table; 1 reception-chair, in cotton;
107 1 blue cretan L'ambriquin; 7 small camp chairs; 48 wall shields;
8 cornices; 2 walnut cases; 2 hides leather; 37 y'ds plush, assorted; 106 y'ds rep do.; 9¼ y'ds satin; 2 y'ds baize; 43 y'ds feather linen; 29¾ y'ds Cretan, assorted; 11⅝ y'ds silicia; 12¼ y'ds linen; 171¼ y'ds silk cord; 140 y'ds worsted cord; 41 silk pillow tassels; 56 Velincia tassels; 60 tassel hoops; 64 braided bands, 16 trimming boxes; 1 y'd striped silk; 24 rolls tape; 11 gross rep buttons; 10 gross plush buttons; 34 pieces gimp; 12 pieces silk gimp; 21 pieces best gimp; 116 y'ds L'ambrequin fringe; 140 y'ds do. gimps; 6 pieces fringe; 32¼ y'ds hair-cloth; 31½ y'ds fancy stripe; 3 wisp brooms; 26 pillow tassels; 5 y'ds enamel cloth; 1 gross cornice hooks; ½ gross cornice hooks; 1¼ gross tassel hooks; 3 doz. drop handles; 8 gilt hat-rack pins; 1 small walnut stand; 6 window shades and fixtures; and further certify that I have, on the 31st day of March, A. D. 1874, released my levy on all the goods on the first floor, office, and basement of said store.

JOHN GRACE,
Sheriff of Ramsey County, Minn.

108 C.

This indenture made the 13th day of March, A. D. 1874, between William H. Shuey, of St. Paul, in the State of Minnesota, party of the first part, and William S. Combs, of St. Paul, in said State, party of the second part:

Whereas, the said party of the first part is justly indebted in sundry considerable sums of money, and has become unable to pay and discharge the same with punctuality or in full, and is now desirous of making a fair and equitable distribution of his property and effects among his creditors:

Now, therefore, this indenture witnesseth that the said party of the first part, in consideration of the premises and of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, released, assigned, transferred, and set over, and by these presents does grant, bargain, and sell, release, assign, transfer, and set over unto the said party of the second part, his heirs and assigns forever, all and singular the lands, tenements, and hereditaments situate, lying, and being in the State of Minnesota or elsewhere, and all the goods, chattels, merchandise, bills, bonds, notes, book-accounts, claims, demands,
109 choses in action, judgments, evidences of debts, and property of every name and nature whatsoever, except only property exempt from execution, of the said party of the first part, including a stock of merchandise situated in his store, number eighteen East Third street, St. Paul, and workshop and storeroom situated on Second street, back of his store, said stock of merchandise consisting of furniture, finished and unfinished, and also all stock in trade, and also all unmanufactured goods, and all goods of every kind and nature, except such goods as are by law exempt as aforesaid. To have and to hold the same and every part and parcel of the same, with the appurtenances, to the said party of the second part, his heirs, executors, administrators, and assigns. In trust, nevertheless, and to and for the following uses, intents, and purposes, that is to say:

That the said party of the second part shall take possession of all and singular the lands, tenements, hereditaments, property, and effects

hereby assigned, and sell and dispose of the same upon such terms and conditions as in his judgment may appear best, but not upon credit, and convert the same into money; and shall also collect all and
110 singular the said debts, due-bills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectible; and thereupon execute, acknowledge, and deliver all necessary conveyances and instruments for the purposes aforesaid. And by and with the proceeds of such sales and collections the said party of the second part shall first pay and disburse all the just and reasonable expenses, costs, charges, and commissions of executing and carrying into effect this assignment; and by and with the residue or net proceeds or avails of such sales and collections the said party of the second part shall pay and discharge all the debts and liabilities of the party of the first part, whether due or to grow due, provided such net proceeds and avails shall be sufficient for the purpose; and if insufficient, then the same shall be applied pro rata, share and share alike, to the payment of the said debts, according to their respective amounts. And after paying the said debts and liabilities in full, the said party of the second part shall the surplus of the said net proceeds and avails, if any there shall be, to the said party of the first part, his executors, administrators, or assigns.

And for the better execution of these presents, and of the sev-
111 eral trusts hereby reposed, the said party of the first part does hereby make, constitute, and appoint the said party of the second part, and his executors, administrators, and assigns his true and lawful attorney irrevocable, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which can or may be necessary in the premises as fully and completely as the said party of the first part might or could do were these presents not executed, and attorneys, one or more, under him to make, nominate, and appoint, with full power of substitution and revocation, hereby ratifying and confirming all and everything whatsoever that my said attorney and his attorneys shall do or cause to be done in the premises.

And the said party of the second part doth hereby accept the trust created and in him reposed by these presents, and doth, for himself, his heirs, executors, and administrators, hereby covenant and agree to and with the said party of the first part, his executors, administrators, and assigns, that he, the said party of the second part, will honestly and faithfully and without delay execute the same according to the best of his skill, knowledge, and ability.

112 In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first hereinabove written.

WILLIAM H. SHUEY. [SEAL.]
WILLIAM S. COMBS. [SEAL.]

Signed, sealed, and delivered in presence of—
E. G. ROGERS.
F. L. ROGERS.

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it known that on this 13th day of March, A. D. 1874, personally came before me William H. Shuey, the assignor, and William S. Combs, the assignee named, and to me well known to be the identical persons who executed the foregoing deed of assignment, and they each acknowl-

edged that they executed the same freely and voluntarily, and for the uses and purposes therein expressed.

I' witness whereof I have hereunto affixed my hand and official seal this March 13th, A. D. 1874.

[NOTARIAL SEAL.] E. G. ROGERS,
Notary Public, Ramsey County, Minnesota.

(Indorsed:) Combs vs. Grace. Served April 4th, 1874, by E. G. Rogers. Exhibit A.

113 STATE OF MINNESOTA,
County of Ramsey, ss:

Charles W. McIntyre, being duly sworn, doth depose and say that on the 14th day of March, A. D. 1874, the sheriff of said county, John Grace, acting under and by virtue of an execution issued out of the district court of the second judicial district for the State of Minnesota, for said county, upon a judgment of that court in favor of Sarah W. Reed, plaintiff, against William H. Shuey and Thomas G. Barnard, defendants, levied upon certain personal property now and then situate in and upon the second and third floors of that certain store in the city of Saint Paul, in said county, known as number (18) eighteen, East Third street, being the store lately occupied by said William H. Shuey.

That said levy was made upon such property as the property of said William H. Shuey; that said sheriff has retained possession of such property ever since such levy, and still retains the same under and by virtue of such levy and not otherwise.

That such property, that is to say, the same which said sheriff now holds under and by virtue of such levy, is of the value of ten thousand dollars.

114 That on the 2d day of April, A. D. 1874, said William H. Shuey was by the consideration of the district court of the United States for the district of Minnesota, sitting in bankruptcy, duly adjudged and declared a bankrupt.

That such adjudication and judgment was duly rendered and entered in that court of bankruptcy on that day upon the petition of one of the creditors of said William H. Shuey duly filed therein; that afterwards such proceedings were had in that behalf; that at a meeting of the creditors of said William H. Shuey duly called and had on the 20th day of April, 1874, deponent was duly elected and chosen assignee in bankruptcy of the said bankrupt William H. Shuey, which choice and selection was duly approved by said court.

That thereupon deponent accepted such trust, gave the required security, and was duly appointed by said United States district court the assignee in bankruptcy of the said William H. Shuey and of his estate, and as such assignee entered upon the execution of the duties incidental to such trust.

That then and there, to wit, on the 21st day of April, A. D. 1874, the proper register of said court in bankruptcy, to wit, Albert
115 Edgerton, duly executed and delivered to deponent as such assignee a deed of assignment, of which a true copy is hereto attached marked "Exhibit A."

That while the property so levied upon as aforesaid was the property of the said William H. Shuey, and before such levy was made, and before such writ of execution was issued, and before the judgment upon which such writ was issued was entered, that is to say, on the 14th day of March, A. D. 1874, the said William H. Shuey duly executed and delivered to William S. Combs a deed whereby said William H. Shuey

assigned, sold, transferred, and set over to said William S. Combs, his heir, legal representative, and assignee, all the property of him, the said William H. Shuey, not exempt from execution by law, including the property levied upon as aforesaid, to William S. Combs; that he convert the same into money, and out of the net proceeds thereof pay the debts of the said William H. Shuey in full or pro rata without preference.

That at the time of making such assignment said William H. Shuey was insolvent and his debts exceeded in amount the value of his assets.

That such assignment was made in good faith and not for the
116 purpose of hindering, delaying, or defrauding any one.

That said William S. Combs, before the issuing of said writ of execution, and before said levy, and before the entry of said judgment on which said writ was issued, duly accepted the trust created by said Shuey's said assignment, and took possession of the property transferred to him thereby, including the property so levied upon as aforesaid, and was in possession thereof at and before the time of such levy, as said judgment-creditor and sheriff then well knew.

Deponent further saith that, at and before the making of said levy, the said William H. Shuey was insolvent, and in contemplation of bankruptcy, then and there suffered and procured a part of his property, that is to say, the property levied upon as aforesaid, to be taken on legal process, that is to say, upon said writ of execution, with intent to give a preference to one of his creditors, that is to say, said Sarah W. Reed, and with the intent by such levy to defeat and delay the operation of said act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March
117 2, 1867; and that the said Sarah W. Reed, and her agents and attorneys in that behalf, at and before the making of such levy, had reasonable cause to believe that said William H. Shuey was then and there insolvent, and that such levy was then and there made in fraud of the provisions of said act of Congress.

Deponent further saith that the said levy was made with a view to prevent the property so levied upon from coming to the assignee in bankruptcy of the said William H. Shuey, and to prevent the same from being distributed under said act, and to defeat the object of said act, and to impair, hinder, impede, and delay the operation of said act, and to evade the provisions of said act, as the said William H. Shuey and the said Sarah W. Reed and her agents and attorneys in that behalf then well knew.

And further deponent saith not, except that this affidavit is made for the purpose of recovering from the said sheriff the possession of the property so levied upon and now retained by said sheriff, and pursuant to the statute in such case provided.

C. W. McINTYRE.

Subscribed and sworn to before me this April 22, '74.
[SEAL.] E. G. ROGERS, *Notary Public, Minn.*

118 To the sheriff of Ramsey County, Minnesota, John Grace:

SIR: The assignee in bankruptcy of William H. Shuey hereby demands that you deliver to him, as such assignee, all the personal property levied upon and now retained by you by virtue of the writ of execution referred to in the affidavit hereto attached.

April 29, '74.

C. W. McINTYRE,
Assignee of William H. Shuey, Bankrupt.

119 *Assignment of bankrupt's effects.*

In the district court of the United States for the district of Minnesota.

In the matter of William H. Shuey, bankrupt. In bankruptcy.

DISTRICT OF MINNESOTA, *ss:*

Know all men by these presents, that Charles W. McIntyre, of the city of S't Paul, in the county of Ramsey and State of Minnesota, in said district, has been duly appointed assignee in said matter.

Now, therefore, I, Albert Edgerton, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Charles W. McIntyre, assignee as aforesaid, all the estate, real and personal, of the said William H. Shuey, bankrupt, aforesaid, including all the property, of whatever kind, of which he was possessed, or in which he was interested, or entitled to have on the 31st day of March, A. D. 1874, with all his deeds,

120 books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act.

To have and to hold all the foregoing premises to the said Charles W. McIntyre and his heirs forever, in trust, nevertheless, for the uses and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand and caused the seal of said court to be affixed this 21st day of April, A. D. 1874.

[SEAL.] ALBERT EDGERTON,
Register in Bankruptcy.

(Indorsed:) U. S. district court, district of Minnesota. In bankruptcy. In the matter of W. H. Shuey. Assignment of bankrupt's effects. Exhibit B. Demand copy original. Served by E. G. Rogers on John Grace April 29th, 1874.

121 It is hereby stipulated that a certified copy of the note, complaint, answer, order for judgment, judgment and execution in the action of Sarah W. Reed against William H. Shuey and Thomas G. Barnard, may be received on the hearing of this cause with like effect as if made a part of the master's report herein.

Also certified copies of notes of said Shuey give to his sister, Mrs. Reynolds, and proved in said bankruptcy proceedings.

Also that the paper, Exhibit C, attached to said master's report may be received and referred to on the hearing of said cause with like effect as if the contents thereof were given orally under oath as testimony in said cause.

That said testimony reported by said master be passed without further notice or order of court, upon the filing of said master's report.

E. C. PALMER,
Sol'r for Def't Sarah W. Reed.
W. P. WARNER,
Pl'ff's Att'y.

122 EXHIBIT C.—*J. Y. Page, master.*

W. H. Shuey, city, in account with The Merchants' National Bank, Saint Paul, Minn.

Checks.				Deposits and disc'ts.			
'74.	(Your No.)			'74.			
Jan. 3	To c'k	10		Jan. 1	By bal	4	43
		90		2		142	50
		8	50	6		999	
5		66		9		293	25
6		37	50	14		450	
		125		16		133	
7		30		20	Disc't	485	
		8		28		90	
9		129		31		100	
12		8	91	Feb. 3		53	75
13		15	91		Disc't	970	
14		6			Disc't	148	47
15		16	50	5		2	
16		33	25	7		143	
17		125		M'ch 4	Disc't	193	80
20		110		9		65	
22		4					
Feb. 2		6					
3		1					
		140					
4		156	43				
7		29	38				
9		180					
10		62					
123 11		38	86				
		61	38				
		5					
M'ch 5		190					
7		55					
12		14					
14			64				
		3,676	90			3,676	90

Correct.

W. R. MERRIAM, *C.*

The two discounts, of 485$ under date of Jan'y 20, 1874, and of 970$ under date of Feb'y 3, 1874, were made to take up Shuey's note, previously discounted in 1873, and falling due on these dates respectively; and the other two discounts were of customers' paper transferred and endorsed by Shuey to the bank, and passed to his credit.

WALTER MANN, *V. P.*

JUNE 23, 1875.

124 To the Hon. Rensselaer R. Nelson, judge of the district court of the United States for the district of Minnesota:

The petition of Mrs. Lucy S. Sanderson, of the town of Northampton, in the county of Hampshire, and State of Massachusetts, respectfully shows—

That she, the said Mrs. Lucy S. Sanderson, is a widow, and is a creditor of William H. Shuey, who, for a period of six months next preceding the date of the filing of this petition, has resided at Saint Paul, in the county of Ramsey, and State of Minnesota, and district aforesaid.

That your petitioner's demand is provable against the said William H. Shuey, in accordance with the provision of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that she believes that said William H. Shuey owes debts to an amount exceeding the sum of three hundred dollars; that your petitioner's demand exceeds the amount of

two hundred and fifty dollars; and that the nature of your petitioner's demand against the said William H. Shuey is as follows:

That at Minneapolis, in said district, on the 1st day of April, 1872, said William H. Shuey, as principal, and one Thos. G. Barnard, as
125 security, made their certain promissory note in writing, dated on that day, whereby on demand after date they promised to pay to the order of said Mrs. Lucy S. Sanderson twenty-six hundred dollars, with interest at ten per cent. per annum, quarterly in advance, for value &c., and then and there delivered said note to your petitioner, the payee therein named. That said Shuey has paid the interest on said note up to Jan. 1st, 1874, but has failed and refused to pay the principal and balance of interest due on said note, although thereto often requested.

And your petitioner further represents that, within the six calendar months next preceding the date of this petition, the said William H. Shuey did commit an act of bankruptcy within the meaning of said act, to wit:

That the said William H. Shuey, being then and there, to wit, at said Saint Paul, a merchant and trader, has within the period aforesaid, to wit, on the first day of January, 1874, fraudulently stopped and suspended payment of his commercial paper, and has not resumed payment thereof, in this, that on said 1st day of January, 1874, the said William H. Shuey failed and refused to pay the said promissory note herein before particularly described, and upon which, then and
126 there due to said petitioner from William H. Shuey, the said sum of twenty-six hundred dollars, principal, and that no part of the same has been paid by said William H. Shuey since that date, and that said petitioner is now the lawful owner and hold' of said note.

And that the said William H. Shuey, within the period aforesaid, and within said district, to wit, at S't Paul aforesaid, on the 13th day of March, 1874, being then and there insolvent, and in contemplation of insolvency, did, by an instrument in writing signed by him, assign, transfer, and deliver unto one William S. Combs, of said Saint Paul, all the goods, chattels, and personal property of him, the said Shuey, with intent to hinder, delay, and defraud his creditors, the said assignment then and there covering and including the goods, wares, and merchandise, stock in trade, accounts, and bills receivable of the said Shuey, situated in his place of business in said city of S't Paul, and which said assignment was an act of bankruptcy within the meaning of said act.

Wherefore, your petitioner prays that he, the said William H. Shuey, may be declared bankrupt, and that a warrant may be issued to
127 take possession of his estate, and that an injunction may issue against the said William S. Combs, restraining him from selling, transferring, or in any manner disposing of any of the property so assigned to him, until the further order of this court; that the same may be distributed according to law; and that such further proceedings may be had thereon as the law in such case prescribes.

LUCY S. SANDERSON, *Petitioner*,
By A. D. SANDERS, *Ag't and Att'y in fact.*

HARVEY OFFICER,
Solicitor for Attorney.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Albert D. Sanders, the duly authorized agent and attorney in fact for Mrs. Lucy Sanderson, the petitioner above named, do hereby make solemn oath that the statements contained in the foregoing petition sub-

scribed by me are true, so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true according to the best of my knowledge, information, and belief. Deponent further says that, as agent and attorney in fact as aforesaid, he has been duly authorized by said Lucy S. Sander-
128 son to cause these proceedings in bankruptcy against said William H. Shuey.

ALBERT D. SANDERS.

Subscribed and sworn to before me this 31st day of March, A. D. 1874.

A. EDGERTON,
Register in Bankruptcy.

(Indorsed:) Case No. 453. In bankruptcy. Creditor's petition. U. S. district court, district of Minnesota. In the matter of William H. Shuey against whom, &c. Original filed March 31, 1874, 2 p. m.

Let an order to show cause issue, and returnable Monday, April 5, 1874, at 10 a. m. Also, let an injunction issue as prayed for.

R. R. NELSON, *Judge.*

HARVEY OFFICER,
Att'y for Petitioner.

129 In the district court of the United States for the district of Minnesota. In bankruptcy.

In the matter of William H. Shuey, against whom a petition for adjudication in bankruptcy was filed on the date hereof.

At Saint Paul, in said district, on the 31st day of March, A. D. 1874, before A. Edgerton, register in bankruptcy of said court.

DISTRICT OF MINNESOTA, *ss:*

Albert D. Sanders, of Northhampton, Hampshire Co., State of Massachusetts, came personall' before me, and being first duly sworn and examined upon his oath, says: That he is the duly authorized agent and attorney in fact for Mrs. Lucy S. Sanderson, the petitioner named in the foregoing proceedings, and as such has in his possession the promissory note hereinafter described.

That the said William H. Shuey has, for a period of six months next preceding the date hereof, been a resident of St. Paul, in said district, and that he was during said time and still is a merchant and trader in said city.

That at Minneapolis, in said district, on the 1st day of April,
130 1872, the said William H. Shuey, with one Thos. G. Barnard, as surety, made their certain promissory note in writing, dated on that day, whereby on demand they promised to pay to the order of said Mrs. Lucy S. Sanderson twenty-six hundred dollars, with interest at ten per cent. per annum, payable quarterly in advance, for value, &c., and then and there delivered said note to said payee therein named, who is now the lawful owner and holder thereof.

That said William H. Shuey has paid the interest on said note up to the 1st day of January, 1874, and that he has failed and refused to pay the principal and interest accrued since said January 1, 1874.

And deponent further says, that the said William H. Shuey, within the period aforesaid, and within said district, to wit, at St. Paul afore-

said, on the 13th day of March, 1874, being then and there insolvent and in contemplation of insolvency, did, by an assignment in writing, signed by him, assign, transfer, and deliver unto one William S. Combs, of said St. Paul, all the goods, chattels, and personal property of him, the said Shuey, and which covered and included all the goods, wares, and stock in trade of him the said Shuey, situated in his place of
131 business in said Saint Paul, and which said assignment was made by said Shuey to said Combs with intent to hinder, delay, and defraud the creditors of him the said Shuey, and was an act of bankruptcy within the meaning of the bankrupt laws of the United States.

That this deponent has seen the original assignment in the hands of said Combs, signed by the said Shuey.

ALBERT D. SANDERS.

Subscribed and sworn to this 31st of March, A. D. 1874, before me.

A. EDGERTON,
Register in Bankruptcy.

(Indorsed:) Case No. 453. U. S. dist. court. In bankruptcy. In the matter of Wm. H. Shuey against whom, &c. Proof of acts of bankruptcy. Filed March 31, 1874, 2 p. m. Wm. A. Spencer, clerk. Harvey Officer, att'y for pet. cr.

132 *Order to show cause, upon creditors' petition.*

In the district court of the United States for the district of Minnesota

In the matter of William H. Shuey, against whom a petition for adjudication of bankruptcy was filed on the 31st day March, A. D. 1874. In bankruptcy.

DISTRICT OF MINNESOTA, *ss:*

Upon filing proofs sustaining the allegations of the petition aforesaid, it is ordered that the said William H. Shuey do appear at this court, at a court of bankruptcy to be holden at the chambers of the judge of said court in Saint Paul, in the county of Ramsey, and State of Minnesota, and district aforesaid, on the 5th day of April, A. D. 1874, at 10 o'clock a. m., and show cause, if any there be, why the prayer of said petition should not be granted; and

It is further ordered that a copy of said petition, together with a copy of this order, be served on said William H. Shuey, by delivering the same to him personally, or by leaving the same at his last usual place of abode, in said district, at least five days previous to the day herein required for his appearance.

Witness the honorable Rensselaer R. Nelson, judge of the said court, and the seal thereof, at S't Paul, in said district, on the 31st day of March, A. D. 1874.

[SEAL OF COURT.]

W'M A. SPENCER,
Clerk of District Court for said Dist.

HARVEY OFFICER,
Att'y for Pet. Cr.

133 (Indorsed:) Case No. 453. United States district court, district of Minnesota. In bankruptcy. In the matter of William H. Shuey, against whom, &c. Order to show cause. Original filed April 1st, 1874, 2 p. m.

DIST. OF MINNESOTA, *ss:*

I hereby certify that I served the within order and copy of petition therein referred to on the within-named W'm H. Shuey, personally, at S't Paul, in said dist., Ap'l 1, 1874.

R. N. McLAREN,
U. S. Marshal,
By J. P. McILRATH,
Dep'y.

HARVEY OFFICER,
Att'y for Pet. C'r.

134 U. S. district court, district of Minnesota.

In the matter of William H. Shuey, against whom a petition for adjudication of bankruptcy was filed on the 31st day of March, 1874, in said court.

The President of the United States of America to William S. Combs, greeting:

Whereas it appears to our said district court, by the petition and proofs on file therein in the above-entitled matter, that the said William H. Shuey, within the six calendar months next preceding the date of said petition (March 31st, 1874), has committed acts of bankruptcy within the meaning of the bankrupt act of March 2, 1867, which are set out at length in said petition;

And whereas from the said petition and proofs sufficient grounds appear therefor, and the said court having so ordered:

Now, therefore, we command and enjoin you, your agents, attorneys, and servants, from making any sale, transfer, or disposition of the property of the said William H. Shuey, or any part thereof, assigned
135 to you by the said William H. Shuey on or about the 13th day of March, 1874, or the proceeds thereof, or any interference therewith, except so far as may be necessary to preserve the same from injury or loss, until the further order of the court.

Witness the Hon. Rensselaer R. Nelson, judge of said court, and the seal thereof, at S't Paul, in said district, this 31st day of March, 1874.

[SEAL OF COURT.] W'M A. SPENCER,
Clerk, &c.

HARVEY OFFICER,
Att'y for Pet. C'r.

(Indorsed:) Case No. 453. U. S. dist. court, dist. Minnesota. In the matter of William H. Shuey, against whom, &c. Writ of injunction. Filed April 1st, 1874, 2 p. m. W'm A. Spencer, clerk.

DIST. OF MINNESOTA, *ss:*

I hereby certify that I served the within writ on the within-named W'm S. Combs personally, at S't Paul, in said dist., March 31, 1874.

R. N. McLAREN,
U. S. Marshal,
By J. P. McILRATH,
Dep'y.

HARVEY OFFICER,
Att'y for Pet. C'r.

136 United States district court, district of Minnesota.

In the matter of William H. Shuey, against whom a petition for adjudication of bankruptcy was filed on the 31st day of March, 1874. In bankruptcy.

And now comes William H. Shuey, above named, and for the purpose of saving expense herein waives all the manifold deficiencies of the petition in this cause, and the insufficiency of the service of the order to show cause, and all rights he might have by reason of the fact that the order to show cause is made returnable on Sunday, and all defects in said petition and paper, and hereby consents that an adjudication in bankruptcy may be entered forthwith against him in said court.

Dated April 2d, 1874.

WILLIAM H. SHUEY.

137 (Indorsed:) Case No. 453. U. S. district court, dist. of Minnesota. In the matter of William H. Shuey, against whom, &c. Filed April 2d, 1874, 4 p. m. Wm. A. Spencer, clerk.

138 *Adjudication of bankruptcy—Creditors' petition.*

In the district court of the United States for the district of Minnesota

In the matter of William H. Shuey, bankrupt. In bankruptcy. At Saint Paul, in said district, 2d day of April, A. D. 1874.

DISTRICT OF MINNESOTA, *ss:*

An order to show cause having been issued and returned herein, and the said William H. Shuey not waiting until the return day of said order, but appearing this day and filing a written consent and request that adjudication might be had upon the petition herein forthwith, thereupon and in consideration of the proofs in said cause, and such written consent and request, it was found that the facts set forth in said petition were true, and it is therefore adjudged that William H. Shuey became bankrupt within the true intent and meaning of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, before the filing of the said petition, and he is therefore declared and adjudged a bankrupt accordingly. And it is further ordered that the said bankrupt shall, within five days after the date of this order, make and deliver or transmit by mail, post paid, to the marshal, as messenger, a schedule of his creditors, and inventory of his estate, in the form and verified in the manner required of the petitioning debtor by the said act.

Witness the honorable Rensselaer R. Nelson, judge of the said court, and the seal thereof, at St. Paul, in said district, on the 2d day of April, A. D. 1874.

[SEAL OF COURT.] WM. A. SPENCER,
Clerk of District Court for said District.

HARVEY OFFICER,
Att'y for Pet. C'r.

(Indorsed:) Case No. 453. United States district court, district of Minnesota. In bankruptcy. In the matter of William H. Shuey, bankrupt. Order of adjudication. Filed April 4, 1874, 2 p. m.

DIST. OF MINNESOTA, *ss:*

I hereby certify that I served the within order on the within-named William H. Shuey personally, at St. Paul, in said district, April 4, 1874.

R. N. M'CLAREN,
U. S. Marshal.

139 District court of the United States, district of Minnesota. In bankruptcy.

In the matter of William H. Shuey, bankrupt.

Now comes Sarah W. Reed and John Grace, against whom an injunction has been issued out of said court upon the petition of the Merchants National Bank in the matter above entitled, and, answering said petition allege and deny as follows: They admit the incorporation of the petitioner as alleged, the proof of claim and amount thereof, the adjudication in bankruptcy of the said William H. Shuey, the character and amount of the property of said bankrupt as alleged in said petition, and the rendition of the said judgment in favor of said Sarah W. Reed, the issuance and levy of said execution on the goods of the said bankrupt on the 14th day of March, 1874, but they allege that said judgment was rendered upon application to the court after answer by said William H. Shuey therein, and not upon default or through or by the connivance or procurement of said Shuey.

140 They deny that any assignment was made by said bankrupt as alleged in said petition, or that said William S. Combs, in said petition named, took actual possession of said property levied on by said sheriff prior to the levy and seizure thereof upon said execution, and they allege that said sheriff levied said execution on the said property of the said William H. Shuey, one of the defendants named therein, and took possession of said property under said levy while the same was in the actual possession and control of the said Shuey, and without knowledge that any assignment had been made, or that any other person than said Shuey claimed any possession of or title to said property.

They deny that said Sarah W. Reed at any time prior to said levy knew, had reasonable cause to believe or know that said William H. Shuey was insolvent, and deny that he was insolvent prior to said 14th day of March, 1874, when he committed the act of bankruptcy charged in said petition.

They deny that the said proceedings, had to obtain judgment, levy, execution, and collect the amount thereof, were had or taken with any view or intent to obtain any unlawful preference over other creditors of

141 said Shuey, and deny that in or by said proceedings said William H. Shuey procured or suffered his said property to be taken on legal process with intent to give a preference to said Sarah W. Reed contrary to the provision of said bankrupt act, whether as alleged in said petition or otherwise.

They allege that said judgment was procured in good faith, that said levy upon said property is valid and a first lien thereon, and that said property ought to be sold thereunder to satisfy the said amount due on said judgment with interest, costs, and expenses of sale. That said injunction should be vacated, and the costs and expenses of keeping said property meantime be paid by said petitioner.

E. C. PALMER,
Attorney for said Reed and Grace.

DISTRICT OF MINNESOTA, *ss:*

E. C. Palmer, being sworn, says that he is attorney for said Sarah W Reed above named, who is a resident of the State of Massachusetts, that all the proceedings referred to in the foregoing answer as taken in her behalf, was had and taken by him as such attorney, and that
142 the contents of said answer are true to the best of his knowledge, information, and belief, and the reason why this affidavit is not made by said Sarah W. Reed, is that she is absent from the district of Minnesota, wherein resides this affiant her said attorney.

E. C. PALMER.

Subscribed and sworn to before me April 14, 1874.

H. E. MANN,
U. S. Commissioner, Dist. Minnesota.

DISTRICT OF MINNESOTA, *ss:*

John Grace, being sworn, says he is the sheriff of Ramsey County, Minn., named in the foregoing answer, and in the petition of said Merchants' National Bank referred to therein, that he knows the contents of said answer, and that the same are true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

JOHN GRACE.

Subscribed and sworn to before me April 14, 1874.

H. E. MANN,
U. S. Commissioner, Dist. Minn.

142½ (Indorsed:) Case No. 453. U. S. district court, in bankruptcy. In the matter of William H. Shuey, bankrupt. Answer to petition for injunction. Due service of within admitted April 14, '74. Geo. L. Otis, att'y for petitioner. Filed April 20, 1874, 10 a. m. W'm A. Spencer, clerk. E. C. Palmer, att'y for def'ts.

143 District court of the United States, district of Minnesota.

In the matter of William H. Shuey, bankrupt.

Take notice that on Friday, the 17th day of April, 1874, at 10 o'clock a. m. of that day, at the chambers of the judge of said court, in Saint Paul, Minn., a motion will be made on behalf of Sarah W. Reed and John Grace, sheriff of Ramsey County, Minnesota, to vacate and set aside the injunction heretofore issued in the proceeding above entitled upon the petition of the Merchants' National Bank, dated April 6th, 1874, commanding them, &c., to refrain from selling certain goods, the property of William H. Shuey, bankrupt, upon the grounds following, viz:

I. First, because said petition and affidavits show that the lien of said execution referred to therein is valid, and a first lien on the said property of said bankrupt.

2. Because upon said petition and affidavits said injunction was improvidently issued.

3. Because, upon the affidavits and answer herewith submitted
144 on behalf of the moving parties herein, it appears that said judgment and levy are valid; that said levy is valid and a first lien upon the property of said bankrupt levied upon by said sheriff.

4. For other good and sufficient reasons appearing upon the papers and files in said proceeding.

And take notice that this motion is based upon the petition of the Merchants' National Bank, and the affidavits of E. G. Rogers and William H. Shuey filed in said proceeding, the answer of Sarah W. Reed and John Grace, the affidavits of E. C. Palmer, John Grace, and Harvey Officer, herewith served, and the order of said court appointing a day for the hearing hereof, and that costs of motion, &c., will be asked.

E. C. PALMER,
Attorney for Sarah W. Reed and John Grace.

To GEO. L. OTIS,
Att'y for Petitioner.

The motion above noticed will be heard on Friday, April 17th, 1874, at 10 a. m., at my chambers in S't Paul.

R. R. NELSON, *Judge.*

145 (Indorsed:) Case No. 453. U. S. district court, dist. of Minnesota. In bankruptcy. In the matter of William H. Shuey, bankrupt. Notice of motion to vacate injunction, and order app't'g hearing.

Due service of within admitted April 14, '74.

GEO. L. OTIS,
Att'y for Petitioner.

Filed April 14th, 1874, 4 p. m.

W'M A. SPENCER, *Clerk.*

146 District court of the United States, district of Minnesota. In bankruptcy.

In the matter of William H. Shuey, bankrupt.

DISTRICT OF MINNESOTA, *ss:*

E. C. Palmer came before me personally, and, being duly sworn, doth depose and say:

That he is, and has been, the sole attorney of Sarah W. Reed, named in the petition of the Merchants' National Bank in the matter above entitled, and that the note for $5,000, on which judgment was obtained on March 14th, 1874, as stated in said petition, was sent to him, and came into his hands for collection about February 1st, 1874.

That he was not then acquainted with said Thomas G. Barnard, who was, and is, a resident of Minneapolis, Minn., nor the said William H. Shuey, nor had any knowledge of their business-standing or circumstances, or the amount of their property, debts, or liabilities, save that said Shuey was then occupying and doing business in a large
147 three-story stone building, No. 18 East Third street, Saint Paul, in which there was a large assortment of costly, valuable, and elegant furniture and furnishing goods.

That affiant immediately made out a summons and complaint on said note in the action referred to in said petition, and went to Minneapolis and saw said Thomas G. Barnard and demanded of him payment of said note; that payment thereof was refused, and affiant then and there served said summons and complaint on said Barnard, and returning to S't Paul the same day, to wit, February 5th, 1874, served the same papers by copy on said William H. Shuey, which occasion was the first

time affiant had ever had an interview or communicated with said Shuey on the subject of said note, or for any purpose.

That in the absence of affiant in Duluth, E. G. Rogers, esq., one of the attorneys of said Shuey, obtained an extension of time to answer in said action upon an affidavit, a copy of which is hereto attached, marked "A," and made part hereof.

That before the expiration of said extension Rogers and Rogers, as such attorneys, served an answer in said action on behalf of said Shuey, a copy of which is hereto attached, marked "B," and made
148 part hereof.

That affiant thereupon made a motion for judgment notwithstanding said answer, which motion was granted by the court and judgment ordered for said plaintiff, and duly entered on March 14th, 1874.

That while said motion was being argued before the court said E. G. Rogers, who appeared therein for said Shuey, remarked in the presence of affiant that Shuey had made an assignment that morning, but whether said remark was made in earnest or jest affiant did not know nor was he apprized of the character, terms, or other particulars of said pretended assignment, nor did he understand that said remark was addressed to him particularly, or intended as notice of any existing fact.

That shortly thereafter, and before said execution was issued or levied, affiant was passing said place of business of said Shuey and saw him therein apparently engaged as theretofore in his usual business, and having full exclusive control and possession of said store and the contents thereof.

And affiant says that said Sarah W. Reed has never, to his knowledge, been within the State of Minnesota, and that the com-
149 mencement of said action, the conduct thereof, the obtaining of judgment, and issuance of execution therein, has been done solely by affiant as her said attorney, and without knowledge, information, or belief that said Shuey was insolvent in fact, or was not possessed of means sufficient to pay all his debts whenever payment should become imperative.

Affiant further says that said Shuey did not do, or suffer any act to be done, or procure or suffer his property, or any part thereof, to be taken on legal proceedings or otherwise with intent to give a preference to said Sarah W. Reed, contrary to the provisions of the bankrupt act in such case provided, or for any purpose, or at all, but on the contrary resisted said legal proceedings as stated aforesaid, and used every effort to prevent a judgment from being taken against him; that, as affiant is informed and believes, said Shuey made the assignment referred to for the purpose and with the intent to hinder and delay the said Sarah W. Reed in the collection and enforcement of her said claim, and in fraud of her rights in that behalf. That said William S. Combs is a bookseller by occupation, and unfitted to take charge of and sell
150 said Shuey's said stock of furniture, and did not intend to do so in person, or in any way, except by leaving the said Shuey and his clerks and servants in charge thereof to the same extent as before said pretended assignment had been made.

That said assignment is fraudulent and void, and known to be so by said Shuey and said Combs when the same was made, and did not operate to pass the title to any property of the said Shuey; and upon information and belief affiant says that said petitioner, the said Merchants' National Bank of the city of St. Paul, and privy to the making of said assignment and the intent thereof, and consented to the same with the purpose and intent and upon the expectation and promise to be paid its

said demand in full, and so gain a preference over other creditors of said Shuey.

Said affiant further says that the release of part of the property levied on by said sheriff was directed by this affiant upon learning that more property had been levied on than was sufficient to pay said judgment, costs, and expenses, and not because the same was or had been claimed by the said Combs under said assignment.

151 Affiant further says that the note of Lucy S. Sanderson, referred to in said petition, was sent to affiant about the date of the said judgment, but that affiant never represented the same nor attempted to collect the same, nor occupied any professional relation thereto; that the same was taken from this affiant by the agent of said Lucy S. Sanderson, one A. D. Sanders, and, in the absence of deponent from the State of Minnesota, was left with Harvey Officer, esq., who had sole and exclusive control of the same, so far as known to this affiant, and of the proceedings taken thereon.

Affiant denies that said Sarah W. Reed and said Lucy S. Sanderson are acting jointly and in concert in this matter for the purpose or intent of obtaining a preference over the other creditors of the said Shuey, whether as stated in the affidavit of said Shuey or otherwise.

Affiant further says that said property so levied on by said sheriff is being kept at great expense to the said judgment creditor, and cannot be sold because of the pendency of said writ of injunction; that affiant, on behalf of said creditor and said sheriff, desires to move to set aside

152 and vacate said writ of injunction, and asks that a short day be fixed by the court upon which to hear and determine said motion.

E. C. PALMER.

Subscribed and sworn to before me this 14th day of April, A. D. 1874.

H. E. MANN,
U. S. Commissioner, Dist. of Minn.

EXHIBIT A.

District court, second district.

STATE OF MINNESOTA,
County of Ramsey:

SARAH W. REED
vs.
THOMAS G. B[illegible]RNARD AND WILLIAM H. SHUEY.

COUNTY OF RAMSEY, *ss:*

E. G. Rogers, being sworn, says that he is one of the attorneys of defendant, William H. Shuey, in this cause; that he has duly appeared therein; that this deponent has been informed by said Shuey, and verily believes, that said Shuey has a good defence to the com-

153 plaint in said cause on the merits; that said Shuey only within the last few days handed the papers in this cause to this deponent, and that said Shuey went east immediately thereafter, and this deponent has had no opportunity of consulting with said Shuey about said cause.

That E. C. Palmer, the attorney for the plaintiff, is absent at the city of Duluth, in said State, and will not return until after the time for answering in said cause expires; although this deponent does not doubt that if said Palmer was here he would grant this deponent a short extension of time to answer in this cause; that this court does not set until

the 5th of May, 1874, and that this deponent does not desire to delay this cause, but simply desires a short extension of time to answer in this cause.

E. G. ROGERS.

Subscribed and sworn to before me this February 23d, A. D. 1874.
[SEAL.] F. L. ROGERS,
Notary Public, Minn.

Now, on reading the foregoing affidavit, and on motion of
154 Rogers and Rogers, ordered that the time to answer in this cause be extended ten days from this February 23d, 1874, and that a copy of this affidavit be forthwith served on E. C. Palmer, the plaintiff's attorney.

W. WILKIN,
Dist. Judge.

EXHIBIT B.

District court, second district.

STATE OF MINNESOTA,
Ramsey County:

SARAH W. REED
vs.
WILLIAM H. SHUEY AND THOMAS G. BARNARD.

The answer of said defendant Shuey to the complaint of said plaintiff in this cause shows to this court and states that said defendant Shuey denies each and every statement, averment, matter, and thing, and every part and portion thereof, in said complaint contained, as therein stated or otherwise, save as hereinafter stated, admitted, or qualified. Second. And further answering herein, said defendant Shuey avers and says, that he admits that said defendant Barnard executed and delivered to the plaintiff the promisory note as stated in the complaint
155 in this cause; but that he, said Shuey, signed the, said note as a surety and without consideration moving from said plaintiff to said defendant Shuey, and simply and entirely as a surety thereon, and that the indebtedness for which said note was given was the sole and individual indebtedness of said defendant Barnard, and the said Barnard received all of the avails and proceeds of said note, all of which was well known to the said plaintiff at the time of the execution and delivery of said note as aforesaid. That said note bears date April 1st, 1872, and became due by its terms on demand thereafter. That said defendant Barnard was at the time of the maturity of said note, and for a long time thereafter, perfectly solvent and amply able to pay said note on demand thereof. That said plaintiff neglected and refused to collect said note of said Barnard, and neglected and refused to make any endeavor for the collection of the same, or to enforce payment of the same at all.

That said Barnard has since become insolvent and unable to pay said note, and without means and resources from which said note can be collected.

156 That said plaintiff held said note and neglected to collect the same and to enforce collection of the same against said Barnard without the consent of this defendant.

Said defendant Shuey further says that he claims that by reason of such wrongful acts and omissions on the part of said plaintiff, and her failure to attempt to enforce the collection of said note from said Barnard, and the present insolvency of said Barnard, he has been discharged from all liability as a surety thereon.

Wherefore he asks judgment for his costs and disbursements.

ROGERS AND ROGERS,
Att'ys for Def't.

STATE OF MINNESOTA,
County of Ramsey, ss:

William H. Shuey came before me personally, and, being duly sworn, doth say that he is one of said defendants in the above-entitled action; that the foregoing pleading is true of his own knowledge, except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

WILLIAM H. SHUEY.

Subscribed and sworn to before me on this 5th day of March, A. D. 1874.

[SEAL.]

E. G. ROGERS,
Notary Public, Minn.

(Indorsed:) Case No. 453. U. S. district court, district of Minnesota. In bankruptcy. In the matter of William H. Shuey, bankrupt. Affidavit of E. C. Palmer. Due service of within admitted, April 14, '74. Geo. L. Otis, att'y for petitioner. Filed April 20, 1874, 10 a. m. W'm A. Spencer, clerk.

157 District court of the United States, district of Minnesota. In bankruptcy.

In the matter of William H. Shuey, bankrupt.

DISTRICT OF MINNESOTA, *ss:*

John Grace before me personally and, being duly sworn, doth depose and say that he is and has been for more than two years last past, sheriff of Ramsey County and State of Minnesota; that on the 14th day of March, 1874, he received the execution and made the levy referred to in the petition of the Merchants' National Bank in the proceeding above entitled; that he went to the furniture store of said William H. Shuey, No. 18 East Third Street, S't Paul, and made said levy on the goods and property therein situate as the property of William H. Shuey, one of the defendants named in said execution; that the clerk of said Shuey was present, and some workmen of said Shuey were then and there engaged in repairing and finishing furniture, but no objection was
158 made to said levy; that it was not until after said levy had been made that affient was informed that an assignment had been made by the said Shuey; that a claim on demand for the property now held by affient under said levy was made by the said William S. Combs, on the 4th day of April, 1874; that the sale of said property so levied on has been postponed until April 24, 1874, and said property is being held at considerable expense.

JOHN GRACE.

Subscribed and sworn to before me this 14th day of April, 1874.

H. E. MANN,
U. S. Commissioner, Dist. Min.

(Indorsed:) Case No. 453. U. S. district court, dist. of Minnesota. In bankruptcy. In the matter of William H. Shuey, bankrupt. Affidavit of John Grace.

Due service of within admitted, April 14, '74.

GEO. L. OTIS,
Att'y for Petitioner.

Filed April 20, 1874, 10 a. m.

W'M A. SPENCER, *Clerk.*

159 District court of the United States, district of Minnesota. In bankruptcy.

In the matter of William H. Shuey, bankrupt.

DISTRICT OF MINNESOTA, *ss:*

Harvey Officer came before me personally, and, being first duly sworn, says that he is the attorney for Mrs. Lucy S. Sanderson, the petitioning creditor in the above matter, and that he has read the petition of the Merchants' National Bank, filed herein April 4, 1874, and the affidavits of E. G. Rogers and William H. Shuey, thereto annexed, and particularly that portion of the affidavit of said Shuey which charges that "said Sarah W. Reed and said Lucy S. Sanderson are acting jointly and in concert in this matter, for the purpose and intent of obtaining a preference over the other creditors of the said deponent."

This affiant further says that he was retained by the said Lucy S. Sanderson, thro' her agent, on the 31st day of March, 1874, with instructions to commence proceedings against said William H.
160 Shuey in this court, and that in pursuance thereof this affiant did commence such proceedings on said date.

That before that time this affiant had heard of the said execution and levy referred to in said petition herein, and that deponent knew, and so advised his client, that the said proceedings in bankruptcy were and would be necessarily adverse to the interest of said execution and levy, and that affiant was then and there instructed by his said client to take all proceedings necessary to protect the interests of his said client, without regard to the interests of said execution creditor.

That in commencing the said bankruptcy proceedings this affiant did not consult with E. C. Palmer, or any other person representing said execution creditor, and did not then, nor at any time since, act jointly or in concert with the said execution creditor or her attorney, or any other person, and that affiant advised his said client that it would be necessary and proper to enjoin the sale of goods levied upon by said sheriff under said execution, and that this affiant fully intended and expected to have filed a petition for that purpose on Monday the 6th day of April, 1874, to wit, on the return day of the order to show
161 cause, and the adjudication of bankruptcy herein.

That on the 2d day of April, 1874, George L. Otis, claiming to represent the said Merchants' National Bank, claimant herein, called upon deponent, and stated that he thought it necessary for the protection of his clients, as well as other creditors of said bankrupt, that an order should be made enjoining the sale under said execution, and requested this affiant to petition for such an order. That deponent then informed said Otis that he, deponent, intended to file such petition on the return day of the said order to show cause, but did not think it necessary to do so before that date, for the reason that affiant knew that the sheriff

could not sell under said execution levy before that date. That affiant stated to said Otis that if he thought such an order was necessary, and he, said Otis, would prepare the papers therefor, he, this affiant, would sign the same, and apply for the order, but that he, affiant, had pressing professional engagements that would prevent him from attending to it that day. That said Otis then left the office of affiant, saying that he would confer and consult with affiant the next day. That on said next day following said Otis did not call upon or consult with affiant
162 in said matter, but that on the 4th day of April, 1874, this deponent met said Otis at the court-house in Saint Paul, and informed said Otis that he was ready to consult with him in relation to said order, and that thereupon said Otis informed him, said affiant, that he had on that day filed the necessary petition and obtained the order from this court.

That deponent, as the attorney for said petitioning creditor herein, expects and intends to dispute and contest the validity of said execution levy, and that this affidavit is not made for the purpose of vacating the said injunction, but to contradict the imputation of bad faith contained in the affidavit of the said Shuey, above quoted.

That this deponent does now, and always has represented a claim which is adverse to the interests of said execution creditor, and is in common with the other creditors of said bankrupt. And neither that the said E. C. Palmer, nor any one else representing said execution creditor, has ever at any time acted, advised, counseled, requested, or assisted this deponent in any matter touching the conduct of the said proceedings in bankruptcy, and that each and every part of the said affidavit of said Shuey, above quoted, is untrue.

HARVEY OFFICER.

163 Subscribed and sworn to before me this 13th April, 1874.

W'M A. SPENCER,
U. S. Commissioner, &c.

(Indorsed:) Case No. 453. U. S. district court, dist. of Minnesota. In bankruptcy. In the matter of William H. Shuey, bankrupt. Affidavit of Harvey Officer.

Due service of within admitted April 14, 1874.

GEO. L. OTIS,
Att'y for Petitioner.

Filed April 20, 1874, 10 a. m.

W'M A. SPENCER, *Clerk.*

164 United States district court, district of Minnesota. In bankruptcy.

In the matter of William H. Shuey, bankrupt.

Affidavit of D. B. Sweet.

DISTRICT OF MINNESOTA, *ss*:

Dexter B. Sweet, of said district, being duly sworn, says:

That on the morning of March 14th, 1874, at nine o'clock a. m., William S. Combs, esq., and M'r W'm H. Shuey, the aforesaid bankrupt, came into the store of said Shuey, in the city of Saint Paul, where I was then employed, and M'r Shuey then and there in my presence delivered to said Combs the key to the front door of said store, and put him, said

Combs, into possession of all and singular the goods, wares, and merchandise, furniture, and property in said store situate, and being the stock in trade and property of said Shuey; that thereupon said Combs employed deponent to take charge of said property and store and hold possession of the same for him, telling deponent that he, Combs, held and owned said property under a general assignment for the ben-
165 efit of the creditors of said Shuey, and deponent under said employment received from said Combs the key to said store and possession of all and singular said property.

That afterwards, between one and two o'clock p. m. of that day and while deponent was in so possession of said store and property under said Combs, John Grace, esq., sheriff of Ramsey County, in said State, came into said store, and said he had an execution against said Shuey which he was going to levy on said property; that deponent thereupon informed said sheriff that said Shuey had made a general assignment of all said property to said W. S. Combs, and that he, deponent, was in possession thereof, as agent for and in the employ of said Combs as such assignee; that thereupon deponent went to Combs' store and informed him of the proposed levy by said sheriff, and said Combs thereupon went to said store with deponent, and showed to said sheriff the written assignment under which he claimed said property, and in deponent's presence protested to said sheriff against his making any levy or interfering with said property or any part thereof; that soon after, and against said protest, said sheriff made a levy
166 upon the property.

DEXTER B. SWEET.

Sworn and subscribed to before me this 15th day of April, 1874.

W'M A. SPENCER,
U. S Commissioner, &c.

(Indorsed:) Case No. 453. U. S. district court. Dist. of Minnesota. In bankruptcy. In the matter of W'm H. Shuey, bankrupt. Rebutting affidavit, D. B. Sweet. Filed April 20, 1874, 10 a. m. W'm A. Spencer, clerk. Geo. L. Otis, att'y for M. N. Bank.

167 United States district court, district of Minnesota. In bankruptcy.

In the matter of Wm. H. Shuey, bankrupt.

Affidavit of Walter Mann.

DISTRICT OF MINNESOTA, *ss:*

Walter Mann, of said district, being duly sworn, says:

That he has read the allegations in folio nine of the affidavit of Judge E. C. Palmer herein, and referring thereto, he denies that the said Merchants' National Bank was privy to the making of said assignments or to the intent thereof, or consented to the same with the purpose or intent or upon the expectation or promise to be paid its said demand in full, as alleged in said affidavit, or otherwise; and he avers that said bank had nothing whatever to do with the making of said assignment, either directly or indirectly, and was not privy to the same or to the intent thereof, and did not consent thereto in any way, nor upon any expectation or promise to be paid its demands in full; that deponent did not, nor did any officer of said bank, ever see said assign-
168 ment, or know the contents thereof, until long after the same was executed and the assignee had taken possession thereof.

That deponent is the vice-president of said bank, and makes this affidavit for and in its behalf, and that he is the same Walter Mann who made an affidavit for said bank upon the application for the injunction herein.

WALTER MANN.

Sworn and subscribed to before me April 15, 1874.

WM. A. SPENCER,
U. S. Commissioner, &c.

(Indorsed:) Case No. 453. U. S. district court, district of Minnesota. In bankruptcy. In the matter of Wm. H. Shuey, bankrupt. Rebutting affidavit of Walter Mann. Filed April 20, 1874, 10 a. m. Wm. A. Spencer, clerk. Geo. L. Otis, att'y for M. N. Bank.

169 United States district court, district of Minnesota. In bankruptcy.

In the matter of W'm H. Shuey, bankrupt.

Affidavit of W'm S. Combs.

DISTRICT OF MINNESOTA, *ss:*

W'm S. Combs, of said district, being duly sworn, says:

That he is and has been for the last twenty-one years a merchant, doing business in the city of S't Paul, in this State; that on the 13th day of March, in the afternoon of that day, deponent was called upon by said William H. Shuey, whose store and place of business was on the same street, and near to deponent's, in said city, and was informed by said Shuey that he was about to make a general assignment of all his property for the benefit of his creditors, and that he desired deponent to act as assignee therein; that deponent acceded to said request, and thereupon an assignment was prepared by said Shuey's attorney, and on the same day was duly executed, a copy whereof is hereto annexed and marked "Exhibit A," and made a part of this affidavit.

170 That on the following morning the original assignment was delivered to him; and after such delivery, at the hour of 9 o'clock a. m. of the 14th day of March, 1874, deponent went into the store of said Shuey and took formal possession, under said assignment, of all and singular the goods, wares, merchandise, furniture, and property in said store situate and being.

That deponent then and there employed one D. B. Sweet, who had been a clerk in the employ of said Shuey, to take charge of said property for him, this deponent, and gave him the key to the front door of said store, which key said Shuey had delivered to deponent on deponent's taking possession as aforesaid, and left said Sweet in charge of said property.

That on or about one o'clock p. m. of the same day said Sweet informed deponent that the sheriff of Ramsey County had entered said store and was about to levy an execution on the property therein; that deponent thereupon notified said sheriff that he was the owner of said property under said assignment, and should claim the same as against any levy that said sheriff should make.

That said sheriff then informed deponent that he had been informed of said assignment by Judge Palmer, the attorney in said execu-

171 tion, but he was ordered, notwithstanding that, to make said levy;

that thereupon and against the protest of deponent said sheriff levied his said execution on said property.

WILLIAM S. COMBS.

Sworn and subscribed to before me the 15th day of April, A. D. 1874.

W'M A. SPENCER,
U. S. Commissioner, &c.

EXHIBIT A.

This indenture made the 13th day of March, A. D. 1874, between William H. Shuey, of S't Paul, in the State of Minnesota, party of the first part, and William S. Combs, of S't Paul, in said State, party of the second part.

Whereas the said party of the first part is justly indebted in sundry considerable sums of money, and has become unable to pay and discharge the same with punctuality or in full, and is now desirous of making a fair and equitable distribution of his property and effects among his creditors:

Now, therefore, this indenture witnesseth that the said party of the first part, in consideration of the premises and of the sum of one dollar
172 to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, released, assigned, transferred, and set over, and by these presents does grant, bargain, and sell, release, assign, transfer, and set over unto the said party of the second part, his heirs and assigns, forever, all and singular the lands, tenements, and hereditaments situated, lying, and being in the State of Minnesota or elsewhere, and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debts, and property of every name and nature whatsoever, except only property exempt from execution, of the said party of the first part, including a stock of merchandise, situated in his store, number eighteen east Third street, S't Paul, and workshop and store-room situated on Second street back of his store; said stock of merchandise consisting of furniture, finished and unfinished, and also all stock in trade, and also all manufactured goods, and all goods of every kind and nature, except such goods as are by law exempt as aforesaid, to have and to hold the same, and every part and parcel of the same, with the appurtenances, to the
173 said party of the second part, his heirs, executors, administrators, and assigns. In trust, nevertheless, and to and for the following uses, intents, and purposes, that is to say:

That the said party of the second part shall take possession of all and singular the lands, tenements, and hereditaments, property and effects hereby assigned, and sell and dispose of the same upon such terms and conditions as in his judgment may appear best, but not upon credit, and convert the same into money; and shall also collect all and singular the said debts, due bills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectible; and thereupon execute, acknowledge, and deliver all necessary conveyances and instruments for the purposes aforesaid; and by and with the proceeds of such sales and collections, the said party of the second part shall first pay and disburse all the just and reasonable expenses, costs, charges, and commissions of executing and carrying into effect this assignment, and by and with the residue or net proceeds or avails of such sales and collections, the said party of the second part shall pay and dis-
174 charge all the debts and liabilities of the party of the first part,

whether due or to grow due, provided such net proceeds and avails shall be sufficient for the purpose; and, if insufficient, then the same shall be applied pro rata share and share alike to the payment of the said debts according to their respective amounts; and after paying the said debts and liabilities in full, the said party of the second part shall return the surplus of the said net proceeds and avails, if any there shall be, to the said party of the first part, his executors, administrators, or assigns.

And for the better execution of these presents, and of the several trusts hereby reposed, the said party of the first part does hereby make, constitute, and appoint the said party of the second part, and his executors, administrators, and assigns, his true and lawful attorney irrevocable, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which can or may be necessary in the premises as fully and completely as the said party of the first part might or could do were these presents not executed, and attorneys one or more under him to make, nominate, and appoint, with full power of substitution and revocation, hereby ratifying and confirming all and everything whatsoever that my said attorney and his attorney shall do or cause to be done in the premises.

And the said party of the second part doth hereby accept the trust created and in him reposed by these presents; and doth for himself, his heirs, executors, and administrators, hereby covenant and agree to and with the said party of the first part, his executors, administrators, and assigns, that he, the said party of the second part, will honestly and faithfully and without delay execute the same according to the best of his skill, knowledge, and ability.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

WILLIAM H. SHUEY. [SEAL.]
WILLIAM S. COMBS. [SEAL.]

Signed, sealed, and delivered in presence of—
E. G. ROGERS.
F. L. ROGERS.

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it known that on this 13th day of March, A. D. 1874, personally came before me William H. Shuey, the assignor, and William S. Combs, the assignee named, and to me well known to be the identical persons who executed the foregoing deed of assignment, and they each acknowledged that they executed the same freely and voluntarily, and for the uses and purposes therein expressed.

In witness whereof I have hereunto affixed my hand and official seal this March 13th, A. D. 1874.

[NOTARIAL SEAL.]

E. G. ROGERS,
Notary Public, Ramsey County, Minnesota.

(Indorsed:) Case No. 453. U. S. district court, dist. of Minnesota. In bankruptcy. In the matter of W'm H. Shuey, bankrupt. Rebutting affidavit of W'm S. Combs. Filed April 20, 1874, 10 a. m. W'm A. Spencer, clerk. Geo. L. Otis, att'y for M. N. Bank.

177 United States district court, district of Minnesota. In bankruptcy.

In the matter of W'm H. Shuey, bankrupt.

Rebutting affidavit of W. H. Shuey.

DISTRICT OF MINNESOTA, *ss:*

William H. Shuey, of said district, being duly sworn, says that he is the above-named bankrupt; that schedule A, hereunto attached, is a correct list of the property levied on by the sheriff under the execution in favor of said Sarah W. Reed; that deponent has been engaged in the furniture business for last nine years, and knows the condition of the market for such property in the city of S't Paul and elsewhere in this State; that the cash value of the property so levied on is about ten thousand dollars; at least two-thirds and probably three-fourths of said value is made up of fine furniture, largely composed of parlor sets, bedroom sets, easy-chairs, fine mirrors, &c.; that said stock is in all respects first-class, and consists of the highest grade and best class of furniture that is brought into the State, or sold therein at S't Paul or elsewhere.

178 Deponent further says that the class of persons who purchase this class of furniture, as a rule, do not attend public sales; that while a cheaper class of wares of a lower grade sell readily in the markets at public sales, the finer wares do not sell readily, and cannot be sold at public sale except at a great sacrifice; that deponent is satisfied that the goods so levied on, if sold at sheriff's sale, would not bring over thirty-three and one-third per cent. of the cost price thereof; that from $1,500 to $2,000 of the gross so levied on are unfinished, consisting of what is known in the business as parlor frames, and are not fit for use and cannot be sold until the same are upholstered and finished; that all the goods enumerated in said schedule marked "in cotton" are of this class; that said goods are nearly valueless until so upholstered and finished.

Deponent further says that said stock of goods consists of a full and complete assortment of furniture and material suitable and adapted to a retail business in this city, and would be desirable as a stock in trade for any person desiring to go into that kind of business; that the same ought to be sold to some dealer or person desiring to go into

179 said business, and can be so sold by an assignee in bankruptcy in the lump, and to such dealer or person, to much greater advantage, and so as to realize very much more for the creditors than in any other way; that if the said sheriff's sale is allowed to proceed, and the stock so levied on is closed out at sheriff's sale, such sale in the aggregate to a dealer will be prevented, and thereby the whole stock, including the goods not so levied on, as well as those so seized by said sheriff, will become less valuable, and the creditors will realize far less than if said stock is judiciously managed by an assignee of this court.

W. H. SHUEY.

Sworn and subscribed to before me the 16th day of April, 1874.

W'M A. SPENCER,
U. S. Commissioner, &c.

180 Ex. A.

3d Floor.

1 medalion set in cotton (parlor); 1 gray hair-cloth do.; 1 brown and blue do.; 1 red silk do., and covers; 1 brown satin do.; 1 green rep do.;

1 oval-b'k do.; 1 square-b'k do.; 1 green cashmere do.; 1 brown rep do.; 1 blue cashmere do.; 1 square-b'k green rep do.; 1 oval-b'k set in frame; 1 medalion-b'k do. in frame; 1 black satin chair; 1 Turkish sofa in cotton; 2 Turkish easy chairs in cotton; 1 Turkish do.; 1 oval stuffed do.; 1 round-end divan do.; 1 square-end divan do.; 1 red rep easy chair; 1 green do.; 1 brown do.; 1 red rep pat. rocker; 1 green rep Turkish easy chair; 1 brown rep do.; 1 smoking chair in cotton; 1 oval-back green rep sofa; 1 satin lounge; 1 open-back divan in cotton; 1 carved-back rep chair; 1 square-b'k pat. rocker; 1 round do.; 1 blue rep sewing chair; 1 revolving library-chair in leather; 1 library do. in leather; 1 red plush Wilson chair; 5 oval-b'k chairs, hair-cloth; 2 hair-cloth rockers; 1 hair-cloth parlor-chair; 4 brown rep chairs; 1 parlor-chair in cotton; 2 blue fancy chairs; 1 gilt and satin chair; 2 fancy-chair frames; 1 cane library-chair; 2 ash and walnut bureaus; 5 ash and wal. washstands; 1 ash and wal. moul'd washstand; 3 wal. washstands; 9 but. washstands; 1 but. and wal. do., moulded; 11 but. teapoys; 7 ash and wal. do.; 4 ash and wal. glass-frames; 1 Berry No. 1
181 glass-frame; 2 ash and wal. do.; 2 wal. do.; 1 wal. teapoy; 4 l'ge wal. cent. tables; 6 small do.; 2 wal. side whatnots; 1 wal. cov. do.; 2 wal. writing-desks; 3 wal. hanging-brackets; 3 wal. stands; 2 ash and wal. F'ch bedsteads; 1 wal. do.; 2 wal. Berry do.; 4 ash and wal. do.; 1 wal. do.; 2 wal. Gothic do.; 1 Gldowsky do.; 23 cane office-chairs; 10 cane-seat office-chairs; 1 spring and swiv. office-chair; 4 cane-seat chairs; 1 Turkish chair-frame; 35 small rockers; 1 spring hair-mattrass; 1 hair do.; 5 wool do.; 20 cot. and wool pillows; 3 feather do.; 3 cotton bolsters; 1 banner sign; 6 window-curtains and fixtures; 3 linen covers.

2d Floor.

4 wal. chamber suites; 1 ash and wal. do.; 1 F'ch bedstead and glass-frame; 4 wal. F'ch bedsteads; 1 wood top chamber suite; 1 ash and wal. F'ch bedstead; 6 wal. washstands; 1 wal. bureau; 1 wal. glass-frame; 7 small marble-top tables; 1 small table frame; 1 inlaid-top music stand; 2 wal. music stands; 1 mar. top washstand and commode; 1 wal. chamber suite; 2 wal. French bedsteads; 2 ash and wal. chamber sets; 1 wal. and ebony chamber set; 1 wal. chamber set; 16 small wal. tables; 1 sq. ottoman frame; 5 wal. cane rockers; 1 sq. library table; 1 caned library do.; 1 Chinese work table; 1 carpet bed-lounge; 1 red rep do.; 1 brown and blue do.; 1 pillow in cotton;
182 1 small pier-glass and brackets; 2 large pier glasses and bases; 1 l'ge mantle glass and brackets; 4 bureau marbles; 9 w. s. marbles; 2. wal. quartette stands; 1 Tenn. marble; 6 l'ge marble tables; 1 round veneered table; 1 oblong do.; 1 French inlaid do.; 1 marble-top gilt table; 1 reception chair in cotton; 1 blue Cretan lambrequin; 7 camp chairs; 48 wal. shields; 8 cornices; 2 wal. cases; 2 hides leather; 37 y'ds plush ass'd; 106 y'ds rep do.; 9¼ y'ds satine; 2 y'ds baize; 43 y'ds feather linen; 29¾ y'ds Cretan ass'd; 11⅝ y'ds silicia; 12¼ y'ds linen; 171¼ y'ds silk cord; 140 y'ds worsted cord; 41 silk pillow tassels; 56 valence tassels; 60 tassel loops; 64 braided bands; 16 trimming boxes; 1 y'd stripe silk; 24 balls tape; 11 gross rep buttons; 10 gross plush buttons; 34 pieces gimp; 12 p'cs silk gimp; 21 p'c's best gimp; 116 y'ds valence fringe; 140 y'ds do. gimp; 6 p'cs fringe; 32¼ y'ds hair cloth; 31¼ y'ds f'cy stripe; 3 wisp brooms; 26 pillow tassels; 5 y'ds enamel cloth; 1 gross cornice hooks; ½ gross do.; 1¼ gross tassel hooks; 3 doz. drop handles; 8 gilt hat tree pins; 1 small wal. stand; 6 window shades and fixtures.

182¼ (Indorsed :) Case No. 453. U. S. district court, dist. of Minnessota. In bankruptcy. In the matter of W'm H. Shuey, bankrupt. Rebutting affidavitof W. H. Suey. Filed April 20, 1874, 10 a. m. W'm A. Spencer, clerk. Geo. L. Otis, att'y for bank.

183 United States district court, Minnesota district, April 20, 1874.

In re William H. Shuey, bankrupt.

A creditor of the bankrupt obtained a judgment against him in the State district court before bankruptcy proceedings was commenced, and the sheriff has made a levy, by virtue of an execution, upon sufficient property to satisfy it.

A temporary injunction was granted by the court, enjoining the sheriff from selling under the execution, upon the petition of an unsecured creditor, who asks that the sheriff be ordered to deliver the property in his possession to the assignee in bankruptcy, when chosen.

A motion is now made by the judgment creditor to dissolve the injunction, and, upon full argument and due consideration, the following is the opinion of the court.

E. C. Palmer, for motion. Geo. L. Otis and Harvey Officer, contra.

184 NELSON, J.:

I have no authority to order the property to be taken out of the hands of the sheriff. The lien under the execution is prima facie valid. The writ was rightfully issued, and until set aside on account of fraud, or for the reason that it is in violation of the bankrupt law, the assignee in bankruptcy has no right to immediate possession of any of the property seized before the judgment is satisfied.

The creditor, upon whose petition the injunction was granted, charges that the judgment upon which the execution issued was obtained through the procurement of the bankrupt, who desired to prefer the judgment creditor. If, when properly presented, such allegation should be sustained by the court, the lien would be declared null and void. Until that occurs, however, I cannot destroy it.

The creditors, at their first meeting, this day, have authorized the assignee to contest the validity of the judgment lien, and for that purpose to file a bill in equity immediately. I shall therefore continue the injunction for the present, unless the judgment creditor will con-

185 sent that, on the sale of the property, the proceeds may be deposited in this court by the sheriff, less the amount of his fees, to remain subject to the lien of the judgment creditor, and to be paid over to him if, in the suit to be commenced by the assignee, the court shall determine the claim or lien valid and legal.

Should he consent to such an arrangement or disposition of the proceeds of the property seized, the clerk, on filing such a stipulation, will enter an order modifying the injunction so as to permit the sheriff to sell at the time advertised.

If the litigation is protracted, an order will be entered that the fund be invested for the benefit of the successful party or parties.

(Indorsed:) Case No. 453. U. S. district court, dist. of Minnesota. In the matter of W'm H. Shuey, bankrupt. Opinion on motion to dissolve injunction. Filed April 20th, 1874, 10 a. m. W'm A. Spencer, clerk.

186 *Assignment of bankrupt's effects.*

In the district court of the United States for the district of Minnesota.
In bankruptcy.

In the matter of William H. Shuey, bankrupt.

DISTRICT OF MINNESOTA, *ss:*

Know all men by these presents, that Charles W. McIntyre, of the city of Saint Paul, in the county of Ramsey and State of Minnesota, in said district, has been duly appointed assignee in said matter. Now, therefore, I, Albert Edgerton, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Charles W. McIntyre, assignee as aforesaid, all the estate, real and personal, of the said William H. Shuey, bankrupt aforesaid, including all the property, of whatever kind, of which he was possessed, or in which he was interested, or entitled to have on the 31st day of March, A. D. 1874, with all his deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act. To have and to hold all the foregoing premises to the said Charles W. McIntyre and his heirs forever, in trust, nevertheless, for the uses and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof, I, the said register, have hereunto set my hand, and caused the seal of said court to be affixed, this 21st day of April, A. D. 1874.

ALBERT EDGERTON,
Register in Bankruptcy.

(Indorsed:) Case No. 453. U. S. district court, district of Minnesota. In bankruptcy. In the matter of William H. Shuey. Assignment of bankrupt's effects to Cha's W. McIntyre, assignee. Filed April 22, 1874, 10 a. m. W'm A. Spencer, clerk.

187 8099.

[$2 rev. stamp. W. H. S. April 1, '72. 50 ct. rev. stamp. W. H. S. Ap'l 1, 72.]

$5,000$^{00}_{100}$.] MINNEAPOLIS, *April 1st*, 1872.

On demand after date, I promise to pay to the order of Mrs. Sarah W. Reed, five thousand dollars, with ten per cent. interest quarterly in advance.

Value received.

THOS. G. BARNARD,
WILLIAM H. SHUEY,
Security.

(Across the face:)
Filed, March 14, '74.

A. ARMSTRONG, *Clerk*,
By JAS. O'BRIEN, *Dep'y.*

Received interest to Oct. 1st, 1872.
" " Jan'y 1, 1873.
" " April 1, 1873.
" " July 1, 1873.
" " Oct. 1, 1873.
" " Jan. 1, 1874.

District court, second district.

STATE OF MINNESOTA,
County of Ramsey:

SARAH W. REED
vs.
THOMAS G. BARNARD, WILLIAM H. SHUEY.

Said plaintiff complains of said defendants, and alleges that heretofore, to wit, on or about the first day of April, A. D. 1872, said defendants made, executed, and delivered to said plaintiff their promissory note in the words and figures following, to wit:

188 $5,000.] MINNEAPOLIS, *April* 1, 1872.

On demand after date, I promise to pay to the order of Mrs. Sarah W. Reed, five thousand dollars, with ten per cent. interest quarterly in advance. Value received.

THOS. G. BARNARD,
WILLIAM H. SHUEY,
Security.

That no part of said note has been paid, except the interest thereon to January 1st, 1874, and due demand of payment of said note and interest has been made on said defendants and payment refused.

Wherefore, said plaintiff demands judgment against said defendants and each of them in the sum of five thousand dollars, with interest thereon at ten per cent. per annum from and after the first day of January, A. D. 1874, besides costs and disbursements.

E. C. PALMER, of St. Paul, Minn.,
Plaintiff's Attorney.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. C. Palmer, being duly sworn, says that he is the plaintiff's attorney in the above entitled action; that said complaint is true to the best of his knowledge, information, and belief, and the reason why this
189 verification is not made by said plaintiff is that she is absent from the county Ramsey, where this affiant, her attorney, resides.

E. C. PALMER.

Subscribed and sworn to before me Feb'y 4th, 1874.
[NOTARIAL SEAL.] HENRY C. JONES,
Notary Public, Ramsey Co., Minn.

District court, second district.

STATE MINNESOTA,
Ramsey County:

SARAH W. REED
vs.
WILLIAM H. SHUEY AND THOMAS G. BARNARD.

The answer of said defendant Shuey to the complaint of said plaintiff in this cause shows to this court and states, that said defendant Shuey

denies each and every statement, averment, matter, and thing, and every part and portion thereof, in said complaint contained as therein stated, or otherwise, save as hereinafter stated, admitted, or qualified.

Second. And further answering herein, said defendant Shuey avers and says that he admits that said defendant Barnard executed
190 and delivered to the plaintiff the promissory note, as stated in the complaint in this cause; but that he, said Shuey, signed the said note as a surety and without consideration moving from said plaintiff to said defendant Shuey, and simply and entirely as a surety thereon, and that the indebtedness for which said note was given was the sole and undivided indebtedness of said defendant Barnard; and the said Barnard received all the avails and proceeds of said note; all of which was well known to the said plaintiff at the time of the execution and delivery of said note as aforesaid.

That said note bore date April 1st, 1872, and became due by its terms on demand thereafter.

That said defendant Barnard was at the time of the maturity of said note, and for a long time thereafter, perfectly solvent and amply able to pay said note on demand thereof. That said plaintiff neglected and refused to collect said note of said Barnard, and neglected and refused to make any endeavor for the collection of the same or to enforce payment of the same at all.

That said Barnard has since become insolvent and unable to pay said note, and without means and resources from which said note can be collected.

191 That said plaintiff held said note and neglected to collect the same, and to enforce collection of the same against said Barnard without the consent of this defendant.

Said defendant Shuey further says that he claims that, by reason of such wrongful acts and omission on the part of said plaintiff and her failure, no attempt to enforce the collection of said note from said Barnard, and the present insolvency of said Barnard, he has been discharged from all liability as a surety thereon.

Wherefore he asks judgment for his costs and disbursements.

ROGERS AND ROGERS,
Att'ys for Def't Shuey.

District court, second district.

STATE OF MINNESOTA,
County of Ramsey:

SARAH W. REED
vs.
THOMAS G. BARNARD AND WILLIAM H. SHUEY. } Special term, March 14, 1874.

The motion in the above-entitled action to strike out the answer of the above-named defendant in said action, and for judgment
192 notwithstanding the said answer, came on to be heard, and after hearing counsel for the respective parties, it is ordered that said motion be, and the same is granted, with ten dollars costs of said motion, and that judgment against said defendant William H. Shuey be entered accordingly.

W. WILKIN,
Dist. Judge.

District court, 2d judicial district.

STATE OF MINNESOTA,
County of Ramsey:

SARAH W. REED, PLAINTIFF,
vs.
THOMAS G. BARNARD AND WILLIAM H. SHUEY,
defendant.

Pursuant to the order of court duly made and filed in the above-entitled action on the 14th day of March, 1874, whereby the answer of defendant William H. Shuey is stricken out and judgment ordered against said Shuey; and the summons and complaint in this action having been personally served on defendant Thomas G. Barnard,
193 more than twenty days having since elapsed, and no copy of an answer or demurrer to the complaint on file having been served by defendant Thomas G. Barnard upon plaintiff's attorney, as required by the summons; now, on motion of E. C. Palmer, attorney for plaintiff, it is hereby adjudged that the plaintiff herein recover of said defendants, Thomas G. Barnard and William H. Shuey, each of them, the sum of five thousand one hundred and four 25-100 dollars damages and sixteen 20-100 costs and disbursements, in all amounting to $5,120.45.

Signed this 14th day of March, A. D. 1874.

ALBERT ARMSTRONG, *Clerk.*

Amount claimed in summons		$5,000 00
" interest		104 25
		5,104 25
Costs and disbursements:		
Statute costs	$10 00	
4 affidavits	1 00	
Clerk's fees (inc. 4)	5 20	
		16 20
		5,120 45

194 District court, 2d judicial district.

STATE OF MINNESOTA,
County of Ramsey:

The State of Minnesota to the sheriff of the county of Ramsey:

Whereas judgment was rendered on the 14th day of March, in the year 1874, in an action in the district court of the second judicial district of the State of Minnesota, for the county of Ramsey, between Sarah W. Reed, plaintiff, and Thomas G. Barnard and William H. Shuey, defendants, in favor of said plaintiff and against said defendants for the sum of five thousand one hundred and twenty $\frac{45}{100}$ dollars, as appears by the judgment-roll filed in the office of the clerk of said court for said county of Ramsey;

And whereas said judgment was docketed in your county on the 14th day of March, in the year 1874, and the sum of five thousand one hundred and twenty $\frac{45}{100}$ dollars is now actually due them:

Therefore you are commanded to satisfy the said judgment, with interest, and your fees, out of the personal property of the said judgment

debtors or either of them within your county; or if sufficient personal property cannot be found, then out of the real property in your
195 county belonging to the said judgment debtors on the day when said judgment was so docketed in your county, or at any time thereafter, not exceeding ten years, and return this execution within sixty days after its receipt by you, to the clerk of the district court, second judicial district, county of Ramsey.

Witness the honorable Wescott Wilkin, judge of the district court aforesaid, at S't Paul, this 14th day of March, in the year of our Lord 1874.

{ SEAL OF DIST. COURT } ALBERT ARMSTRONG, *Clerk*,
{ RAMSEY CO., MINN. } By JA'S O'BRIEN, *Dep'y Cl'k.*

E. C. PALMER,
Plff's Attorney.

STATE OF MINNESOTA,
County of Ramsey, ss:

I certify and return that I have, on the 14th day of March, A. D. 1874, and one o'clock and fifty minutes, levied upon all the goods, wares, and merchandise belonging to the within-named defendant William H. Shuey, in store No. 18 Third street, S't Paul, Minnesota; and further certify a writ of injunction had been served by the U. S. marshal on the 4th day of April, 1874; and do further certify that on the fourth day of May, 1874, I have been directed by E. C. Palmer, plaintiff's
196 attorney, to release my said levy, and deliver said personal property over to Charles McIntyre, esq., who had then been in charge for the bankrupt court.

JOHN GRACE,
Sheriff of Ramsey Co.

Fees.

Sheriff's commission	$100 00
Paid H. J. Han att'y fees in case	50
	$50 paid.

(Endorsed:) Filed Aug. 20, 1874. A. Armstrong, clerk.

STATE OF MINNESOTA,
Ramsey County:

I, Albert Armstrong, clerk of district court Ramsey County, and State of Minnesota, do hereby certify that I have compared the foregoing paper writing with the original judgment, execution, note, complaint, answer, and order in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said original and the whole thereof.

Witness my hand and seal of said court, at S't Paul, this 28th day of June, A. D. 1875.

[SEAL OF COURT.] A. ARMSTRONG, *Clerk.*
JA'S O'BRIEN, *Dep'y.*

197 Supreme Court of the United States.

On appeal from the circuit court of the United States for the district of Minnesota.

CHARLES W. MCINTYRE, ASSIGNEE IN BANKRUPTCY of William H. Shuey, respondent,
vs.
SARAH W. REED, IMPLEADED WITH LUCY S. Sanderson, appellant.

Know all men by these presents, that we, Sarah W. Reed, of Northampton, Massachusetts, by E. C. Palmer, her attorney in fact, as principal, and E. C. Palmer and Horace Thompson, of Saint Paul, Minnesota, as sureties, are held and firmly bound unto Charles W. McIntyre, assignee in bankruptcy of William H. Shuey, above named, in the sum of five hundred dollars, to be paid to the said Charles W. McIntyre, assignee in bankruptcy of said William H. Shuey, his successors in office, his executors or administrators, for which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated this thirtieth day of June, A. D. 1875.

198

Whereas the said Sarah W. Reed hath taken an appeal to the Supreme Court of the United States to reverse the order and decree rendered in the above cause in favor of said assignee in bankruptcy and against said appellant, Sarah W. Reed, by and entered in and by the circuit court of the United States for the district of Minnesota, of date June 30th, 1875, which appeal was allowed in open court on said last-named date, and the penalty in the bond or security to be given on said appeal was fixed at said sum of five hundred dollars by said court.

Now, therefore, the condition of this obligation is such that if the above-named Sarah W. Reed shall prosecute her said appeal to effect and answer all costs and damages if she shall fail to make good her plea and appeal, then this, her obligation, shall be void, otherwise to remain in full force and virtue.

SARAH W. REED, [SEAL.]
By her attorney in fact, E. C. PALMER.
E. C. PALMER. [SEAL.]
HORACE THOMPSON. [SEAL.]

Signed, sealed, and delivered in presence of—
H. E. MANN.
J. A. SPENCER.

199 DISTRICT OF MINNESOTA, *ss:*

Be it known that on this 7th day of July, A. D. 1875, came before me, Sarah W. Reed, by her attorney in fact, E. C. Palmer, and her said attorney duly acknowledged the execution of the foregoing instrument as the act and deed of the said Sarah W. Reed; and also came E. C. Palmer and Horace Thompson, sureties upon said instrument, and each duly acknowledged the execution of the same.

[SEAL.] H. E. MANN, *Clerk.*

(Indorsed:) 305. U. S. circuit court, district of Minnesota. Chas. W McIntyre, assignee, &c., vs. Sarah W. Reed. Bond on appeal.

Bond hereby approved and appeal allowed.

R. R. NELSON, *Judge.*

Filed July 8, 1875.

H. E. MANN, *Clerk.*

200 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, H. E. Mann, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing is a true and complete transcript of the record, process, pleadings, orders, final decree, and all other proceedings in said cause, and also of all the depositions, exhibits, and proofs taken therein, as appears from the original files and records of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Saint Paul, in the district of Minnesota, this 5th day of October, A. D. 1875.

[SEAL.]

H. E. MANN, *Clerk.*

(Indorsement on cover:) No. 363. Sarah W. Reed, impleaded with Lucy S. Sanderson, appellant, vs. Charles W. McIntyre, assignee in bankruptcy of William H. Shuey. Minnesota, C. C. U. S. Filed 3rd March, 1876.

Supreme Court of the United States.

SARAH W. REED, impleaded with LUCY S. SANDERSON, Appellant,

vs.

CHARLES W. McINTYRE, Assignee in Bankruptcy of WILLIAM H. SHUEY, Respondent.

BRIEF OF APPELLANT,

H. C. PALMER,

Counsel for Appellant.

Joseph L. Pearson, Printer, 9th and D streets, Washington.

Supreme Court of the United States.

SARAH W. REED IMPLEADED WITH LUCY S. SANDERSON, APPELLANT,

vs.

CHARLES W. MCINTYRE, ASSIGNEE IN BANKRUPTCY OF WILLIAM H. SHUEY, RESPONDENT.

BRIEF OF APPELLANT.

E. C. PALMER, *Counsel for Appellant.*

STATEMENT OF THE CASE.

Mrs. Reed, the appellant, obtained judgment for $5,120.45 against William H. Shuey and another, on the fourteenth day of March, A. D. 1874.

Execution was issued thereon on the same day, and levied on a portion of the goods, wares, and merchandise of said Shuey, who, up to that time, had been a leading furniture dealer in St. Paul, Minn., occupying a large three-story building on the principal street. The sheriff found the usual clerks and workmen engaged in the building, and made the levy by actually taking charge and exclusive possession of that part of the goods levied on. This possession he retained and held at the date of the filing of the petition in bankruptcy hereinafter referred to, and for a long time thereafter, the court of bankruptcy having refused to disturb it.

On the same day this levy was made, Shuey assigned all his said property to one Combs, for the benefit of creditors, and Combs claimed to have possession at the time of the

levy by virtue of the assignment aforesaid, and he continued to occupy the store in connection with the sheriff, but not intermeddling with the goods levied on till dispossessed by the proceedings in bankruptcy.

While the sheriff still held part of the goods under his levy, and Combs the balance under said assignment, a petition in bankruptcy was filed against Shuey, to wit, on the 31st day of March, 1874; and on the 2d day of April, 1874, said Shuey was adjudged a bankrupt on his own confession.

Folios 136, 137, 138.

The petition charged, Shuey admitted, and the court adjudged, that the assignment to Combs was made by said Shuey, with intent to hinder, delay, and defraud his creditors, and that it was an act of bankruptcy within the meaning of the bankrupt law.

On April 21, 1874, the Register in Bankruptcy, made his assignment to Charles W. McIntyre, as assignee, of all the property, &c., which Shuey owned or was entitled to have, on March 31, 1874.

It became apparent to the parties that the property levied on would be sacrificed and no one be benefited, unless some arrangement could be made. A stipulation was entered into, which is found in the Record—pages 4, 5, 6—and the property was sold and the proceeds invested under the direction of the court, to await the result of the suit contemplated in the stipulation.

The attention of the court is called to the terms of that stipulation, which in substance restrict the assignee in bankruptcy to an attack upon the judgment, execution, and levy.

Folios 12 to 16.

Accordingly the bill charges that Shuey suffered and procured the property in controversy to be taken upon the writ of execution with intent to give a preference to Mrs. Reed, the execution creditor, and to defeat, hinder, and delay the operation of the bankrupt law, &c.

Folios 9, 10.

There is also a charge in the bill that the proceedings in bankruptcy were commenced by collusion between the ex-

ecution creditor and the petitioning creditor, in order to prevent an equal distribution of the property levied on among Shuey's creditors.

Folio 68.

This latter charge was virtually abandoned on the hearing, as also the charge that the judgment was collusive.

The position was taken and sustained by the court below, that the title to the property levied on was, at the date of the levy, in Combs, the general assignee; that although the assignment to Combs had been adjudged void as made with intent to hinder, defraud, and delay creditors, and was an act of bankruptcy, yet the assignee in bankruptcy could still invoke it as valid against the levying creditor, Reed, and so defeat the priority which she would otherwise have been entitled to by virtue of her levy; thus holding the assignment good as against creditors claiming special liens, but void for all other purposes and as against general creditors.

On this ground the bill was sustained—a final decree entered, from which this appeal was taken.

ASSIGNMENTS OF ERROR, AUTHORITIES, AND ARGUMENT OF APPELLANT.

I.

THE JUDGMENT OBTAINED BY REED AGAINST SHUEY WAS WITHOUT TAINT OF FRAUD, THE EXECUTION THEREON DULY ISSUED, THE LEVY, BY THE SHERIFF, REGULAR AND LAWFUL, AND HIS POSSESSION AND RIGHT OF POSSESSION OF THE GOODS LEVIED ON, PRIMA FACIE, VALID.

Wilson vs. City Bank, 17 Wall., 473.
Gen. Statutes of Minn. ch. 66, secs. 269, 270, 271.
Per Nelson J., Record, folio 184.
National Bank vs. Warren, 6 Otto, 539.

It is to be observed that by the express terms of the stipulation (Record, folios 14–15) Mrs. Reed stands in place of the sheriff, and entitled to all his rights and defences.

The sheriff had a valid execution; he went into the place of business of the judgment debtor and made an actual levy on the property in question as his property. He took it into his exclusive custody and held it until surrendered under the terms of the stipulation. His proceedings were regular, his possession complete, his levy a good one. *Prima facie* his title was valid, his right to sell unchallenged, and as an officer of the State Court in possession he could only be assailed in that court by Combs, the pretended assignee, in the manner prescribed in section 137 of chap. 66, of Gen. Statutes of Minn. Neither Combs nor Shuey intervened.

The sheriff was not a trespasser and could not be sued by any one other than Shuey, the defendant in the execution, except after a demand and claim of property and a refusal to abandon the levy. Until such demand and refusal the sheriff was not in the wrong, and not liable to suit.

A demand on the sheriff was made by Combs, but not until after the petition in bankruptcy had been filed, the injunction served, and the adjudication in bankruptcy made.

Folios 124 to 139.

Of course such a demand was inoperative; a mere *brutem fulmen.*

The assignee in bankruptcy made a demand (folios 113–118) dated April 29, 1874, but when it was served on the sheriff does not appear. If this demand has any force in favor of the assignee in bankruptcy, which we deny, it for the first time put the sheriff in a position to be sued on or after April 29, or one month and a half after the date of his levy and possession. Up to that time he was in lawful, peaceable possession of the property levied on, not subject to suit by this assignee, or any one other than the defendant in the execution. Mrs. Reed, the levying creditor, was in like position.—(Folios 14, 15.) Not only so, but upon a full hearing the court of bankruptcy had held the levy good.

Folios 183–185.

The bankruptcy court having refused to disturb the possession of the sheriff, or vacate the injunction, the lien of the levy remained in fact, at the time the assignment to McIntyre was made, to wit, April 21st, 1874, and so continued until the goods were turned over to the assignee in bankruptcy, under the terms of the stipulation. Combs, meantime, had yielded up possession to the marshal, and to use his own language, "dissolved his connection with the matter and had nothing to do with it since."

Record, folio 70.

The sheriff, therefore, was the sole party in possession with no adverse claimant, save the assignee in bankruptcy.

In this condition of things, with a valid judgment, a lawful possession under an execution legally levied on the goods as the property of Shuey, Mrs. Reed claimed the property as prior in time and prior in right to McIntyre, the assignee in bankruptcy. The only party who could have claimed the property by virtue of the general assignment of March 14, 1874, was Combs, and he had abandoned the field. His title, if he ever had one, derived under or by force of that assignment, had been adjudged invalid, and there was nothing to pass to the assignee in bankruptcy from Combs, or by or under that instrument. The validity of that instrument as a transfer of title from Shuey to Combs was no longer a practical question. No one remained, no grantee or transferee, to enforce *that instrument* even had it been good.

It had been destroyed, held void, not merely or mainly as an act of bankruptcy, but because made with intent to hinder and delay creditors.

II.

THE ADJUDICATION IN BANKRUPTCY DID NOT DISTURB OR AFFECT THE LEVY OR THE LIEN ACQUIRED THEREBY. THE ASSIGNEE IN BANKRUPTCY TOOK TITLE SUBJECT TO ALL EXISTING LIENS, LEGAL AND EQUITABLE.

Kelly vs. Scott, 49 N. Y., 595.

Cook vs. Miller, 18 Wall., 332.

Hayes vs. Dickinson, 16 N. Y. Sup. Ct., 277.
In re Hambright, 2 N. B. R., 498.
Mitchell vs. Winslow, 2 Story, 630.
McLean vs. Moline, 3 McLean, 201.
McDonald, assignee, vs. Moore, 15 N. B. Reg., 26.
Dolson vs. Kerr, sheriff, 16 N. B. Reg., 405.

Neither the filing of the petition nor the adjudication in bankruptcy *per se* had any force or effect in determining the character or the validity of the levy then existing. They were some of the steps in the proceedings and only gave the assignee in bankruptcy a status or right as such assignee to show that he had a better title to the property in dispute than the levying creditor—both parties claiming under a common source of title. And we respectfully suggest that the error of the court below was due to the assumption that the assignee in bankruptcy was entitled to claim title to the property levied on by or under the assignment to Combs, and to a disregard of the effect on that instrument of the adjudication that it was made with intent to hinder and delay creditors.

But McIntyre does not, cannot claim under Combs. He claims in utter and unmitigated hostility to him. His position is that Combs never had title; that the goods always remained the property of Shuey. Hence he cannot now nor can the court for him turn about and maintain that the property did pass from Shuey to Combs by force of that instrument, and consequently did not belong to Shuey when the levy was made or the petition in bankruptcy filed. The fact that the assignment to Combs was a general assignment for the benefit of creditors cuts no figure here. If creditors had been content to permit the property to be distributed under that assignment, this assignee in bankruptcy would never have had an existence. That assignment having been attacked by this judgment creditor, through her levy, as void as to her, and by others made the basis of an adjudication in bankruptcy against the assignor Shuey, and having obtained an adjudication that it

was *fraudulent in fact*, it does not rest with any of them, or with the assignee in bankruptcy, to claim that it was valid for any purpose.

The question here is one of priority rather than of validity, and the burden of proof is on the complainant.

He comes last in point of time—he must show title in himself—he finds property of the bankrupt under levy to satisfy a judgment about which there is no question. The proceedings taken to obtain the levy are regular. "The levy under the execution is *prima facie* valid."

"The writ was rightfully issued, and until set aside on account of fraud or for the reason that it is in violation of the bankrupt law, the assignee in bankruptcy has no right to immediate possession of any of the property seized before the judgment is satisfied."

Per Nelson J., Record, folio, 184.

The charge of fraud made in the bill was, as we have said, abandoned on the hearing; and we dismiss it with the single remark that the evidence shows that such charge was rashly and falsely made. Not only was there no proof of the charge, but the testimony of the parties implicated so clearly shows the utter groundlessness of the charge that comment is unnecessary. It ought to be noticed, however, that it would be foolish as well as fraudulent to institute proceedings which would effectually defeat the levy by reason of their having been instituted with the intent charged.

There can be no pretence, in view of the evidence, that the levy was in violation of the bankrupt law.

Wilson vs. City Bank, 17 Wall., 493.

It was made under a writ rightfully issued upon a valid judgment, on the same day that the general assignment was made, and without notice that the property levied on was in possession of Combs, the general assignee.

More than a month afterwards the assignee in bankruptcy intervenes, and the contention relates solely to priority of title.

There is no sound principle upon which such an assignee can claim to occupy a better position in respect to specific property lawfully levied on, than could a general creditor under a subsequent levy.

How does this assignee attempt to show title in himself? Simply and solely by claiming that the assignment to Combs was good; that it transferred the title from Shuey to Combs before the levy was made; that, consequently, Shuey had no leviable interest in the goods, and that he, McIntyre, took the title which Combs had, not that which Shuey had. In short, he claims to stand literally and technically in Combs' place as his assignee upon the question of title, rather than as the assignee of Shuey, and to ignore the force and effect of the adjudication in bankruptcy, whereby the assignment to Combs was decreed to be void as made with intent to hinder and delay creditors.

In answer to this we insist—

1. That this assignee is not in a condition to show title in himself, under or through the assignment to Combs. He cannot occupy inconsistent positions. By force of the adjudication, the assignment to Combs was declared to be void, on the grounds alleged in the petition, to wit, *that it was made with intent to hinder, delay, and defraud creditors*, and because it was an act of bankruptcy, within the meaning of the bankrupt law. This judgment, resting upon the solemn confession of the bankrupt, as appears of record, this assignee cannot be permitted to dispute. What Combs might have done had he remained undisturbed, is of no moment to the party whose official status is due to the judgment which decides that Combs never acquired title, that Shuey never ceased to hold it.

McIntyre took only the right and title that Shuey had. His interest is derivative and cannot be enlarged by reason of the existence of an instrument which has not only been adjudged void because made with a fraudulent intent, but whose void character alone supports him in his representative position.

2. Combs himself could not have maintained suit against the sheriff, except as provided in section 137, chapter 66, Gen. Stat. of Minn., and no such right passed to this assignee.

Combs had made no demand on the sheriff prior to the date of the adjudication, and had he himself been in a position to have maintained a suit against the sheriff before bankruptcy supervened, it was personal to him and could not pass to his dispossessor.

McIntyre must stand on his own title, which is hostile to Combs. His claim is derivative through Shuey, not through Combs; not under the void assignment, but in spite of it, because it was void.

He took nothing from or under Combs, because as to him, as well as to Shuey's creditors, Combs had nothing, and could transfer nothing. The right of Combs to insist that the act of the sheriff was a trespass and his levy void, depending as it did on the validity of his assignment and his compliance with the statutory requirements, ceased to exist when that assignment was adjudged void, and Combs acquiescing, yielded his claim. A void grant and a disabled grantee need no further demolition.

But had Combs remained assignee, bankruptcy not having intervened, and contested the levy, and been defeated, or had failed to contest—the levy would have remained good and the judgment have been satisfied out of the proceeds of the property seized.

How can McIntyre be held to have obtained and be entitled to enforce such claim, in disregard of the character which he has stamped on the assignment, and of the position in which he has placed the assignee, Combs?

It will not do to say that the assignment to Combs was good, and therefore Reed took nothing by her levy—that the levy was invalid. This assumes as a fact what McIntyre has no status to prove, what the record shows is not true, what he has settled to be untrue, as also has Shuey,

the party under whom he claims, and to whose rights, and his alone, he succeeds.

Neither does the fact that the assignment to Combs was general and provided in terms for an equal distribution of property among all Shuey's creditors, aid this assignee.

1. Because such instrument has been found void by reason of the fraudulent intent with which it was made—void *ab initio.*

2. Because it is void under and by force of the bankrupt law, without refereuce to its general fraudulent character.

Hence the assignee cannot be heard to maintain that such instrument is not void. That question has been settled as a question of fact, and according to some authorities must have been so found and settled before the assignee could show even a *prima facie* title to the property.

These authorities hold that an assignment for the benefit of creditors, without preference, is not necessarily an act of bankruptcy. That an actual fraudulent intent must be shown.

Sedgwick vs. Place, 1 N. B. R., 673.
Langley vs. Perry, 2 N. B. R., 596.
Mayer vs. Hillman, 1 Otto, 496.

But all the cases hold that an instrument made with intent to hinder, delay, or defraud creditors, is not only an act of bankruptcy, but is absolutely void.

In the case at bar this intent is directly charged, is admitted to have existed, and is so adjudged upon the record.

Combs admits it by yielding up all the property embraced in his assignment not levied on, and allowing McIntyre to take possession. He might have contested—have denied that the assignment to him was made with any unlawful or fraudulent intent; had he have done so, and succeeded in such defence, the assignee in bankruptcy would have had no claim or title to the property, and the contest would then have been between Combs and the sheriff; but neither Shuey nor Combs denied the fraudulent character

of that instrument, but made all haste to admit it in favor of the petitioning creditor.

Folios 136–138.

It is a fact to be borne in mind, that all steps in the bankruptcy proceedings, subsequent to the filing of the petition, were taken by creditors other than the creditor who filed the petition.

Folios 91–96.

The order on Shuey to show cause was returnable April 5, (folio 132,) but without waiting for that day Shuey, at the instance of the Merchants' National Bank, appeared on April 2, and consented that he might be adjudged a bankrupt.

Folio 136.

The court thereupon adjudged "that the facts set forth in the petition were true," &c.

Folio 138.

So far, therefore, from these later proceedings being chargeable to the levying creditor, or to Mrs. Sanderson, the petitioning creditor, they are directly chargeable to the creditors who are now, through the assignee in bankruptcy, contesting the rights of this appellant.

It has been suggested that the right of a levying creditor cannot be supported or enlarged by the intervention of bankruptcy. That this levy must be tested by the facts existing at the time such levy was made. That no one but the assignee in bankruptcy can claim any benefit from the fact that a transfer is void under the provisions of the bankrupt law.

There is a sense in which this view may be sound. Bankruptcy certainly cannot make a levy or lien good which was unlawful or fraudulent in the beginning, or which was inchoate or incomplete, or incapable of being enforced by reason of some undisputed or indisputable fact.

But to hold that a creditor with a lawful levy, under an execution good on its face, issued on a judgment regular in

form and valid in fact, and levied on property claimed by an assignee, shall not be permitted to reap the benefit of the failure or discharge of such hostile claim is to reverse all ordinary rules in the administration of justice.

How can such failure of an antecedent cloud or lien, or fraudulent transfer, narrow or defeat such a levy? The levy is generally made to test the validity of some prior act. Does it lose its force because that prior act, by reason of its own infirmity, or the success of some other assailant, ceases to be—drops and becomes null? An assignee in bankruptcy finds property, recently owned by the bankrupt, claimed by different parties—A claims it by reason of an assignment for the benefit of creditors; B claims it by reason of a prior levy; C claims it by reason of a tax title, or a mechanic's lien, and the bankrupt himself claims it as a homestead.

Now suppose that the assignee in bankruptcy attacks A and, the making of his assignment not having been set up as an act of bankruptcy, succeeds in proving that it was made with intent to hinder, delay, or defraud creditors, and hence was fraudulent in fact. Such result would dispose of A's claim, but would it also defeat or make invalid the claims of B and C? By no means. The *validity* of the levy, of the tax title, the mechanic's lien, the claim of homestead, remains unaffected and undisturbed, and must be tested by the law and the facts peculiar to each.

The *rights* of these parties are not enlarged by the setting aside of A's assignment. They had the right to establish their claims notwithstanding such assignment, and the fact that another claimant has done what they had the right to do, does not affect the validity of their claims or their relation to each other.

And if the assignee in bankruptcy should proceed to attack B's levy he could not show it to be invalid by producing the assignment to A which he had just overturned as fraudulent in fact, and proving that it was made in good faith and hence cut out the levy.

All that bankruptcy does or can do in such case is to furnish the occasion or means for showing just what might have been shown, had no such proceedings have been instituted. It neither creates nor destroys a lien upon the bankrupt's property, unless such lien be a fraud under the act, nor changes the relative priority of lien holders, but takes the property as it finds it, subject to all valid liens, legal and equitable.

The true doctrine in this class of cases we believe to be this: that whenever a party acquires such a lien upon or secures such a position in regard to property as will enable him to contest the validity or priority of other liens on the same property, when his lien is good as against the party whose property he seeks to hold, then and in such case, he may reap the benefit of any failure or discharge of such hostile liens which has not been procured by his own fraudulent conduct. And he may do this as well when the question arises between him and an assignee in bankruptcy as when any other party is contestant.

Again: the policy of the bankrupt law does not aid this assignee in the solution of the question under consideration, but the reverse.

That policy declares such an instrument as is now attempted to be set up against us, to be void. That policy excludes Shuey, the fraudulent grantor, and Combs, the fraudulent grantee, from all participation in the management or control of the property, on the ground that they have fraudulently combined to defeat the intention and operation of the law by means of an instrument which they admit to be a fraud in fact. In the presence of this luminous and controlling fact we ask, how can such policy be subserved or supported by invoking the protection of an instrument which the same law makes void as hostile to its general purpose and practical operation?

That instrument is no longer a shield for any one. This assignee cannot take shelter behind it, for he has attacked and destroyed it. It no longer exists. When it was set

aside—made null by the adjudication in bankruptcy—"it became void from the time it was made against all persons who, after the time it was made, took steps to acquire rights against the property embraced in it as still the property of Shuey, and who, but for its obtainment, would have secured and enjoyed such rights free from any obstruction. Such rights arrange themselves in order according to their priorities in point of time."—Per Blatchford, J., in McDonald, Assignee, v. Moore et al., 15 N. B., Reg. 29.

By express provision of the bankrupt law (R. S. of U. S., §5,044), the title of the assignee in bankruptcy dates from the filing of the petition—which in this case was March 31, 1874. As the levy was made and possession taken thereunder on March 14, 1874, the levying creditor is prior in point of time.

The principal case in conflict with these views is, In re Biesenthal et al., 15 Nat. B. Reg., 228, decided by Johnson, circuit judge. According to him, the controlling consideration is that deduced from the opinion of Judge Story, in Everett v. Stone, 3 Story, 454–5, and is in substance, "that judgment creditors cannot avail themselves of a fraud under the Bankrupt Act to defeat the very policy of the act itself," and reference is made to 6 Hill, 9, and 3 Barb. Ch. R., 344.

In the case now before the court, it is an admitted fact that Shuey made the assignment to Combs knowing that he was insolvent, and with intent to hinder, delay, and defraud his creditors. The petition charges this. Shuey confesses it. The adjudication determines it. It is *res adjudicata*.

See also In re Goldschmidt, 3 N. B. Reg. 165.

The intent to delay or hinder creditors is a question of fact. Whether such fact be proved or admitted to be true can make no difference. The intent being established, the assignment is void as against any creditor who attacks it, whether bankruptcy has intervened or not. Because the

bankrupt law declares that an assignment made with such intent is an act of bankruptcy, that does not limit the effect of setting aside such void instrument to the assignee in bankruptcy, or those claiming under him.

An instrument made with such intent is void without reference to the terms of the Bankrupt Act. The ban of that act does not prevent such instrument from being void on general principles, nor debar a creditor whose vigilance has given him a special prior lien, from retaining his priority against subsequent claimants, especially against one who has no claim to assert except upon the basis that the instrument thus made is void.

It is not necessary in the case now before the court to consider what the rule would be, had this assignment been held an act of bankruptcy, but valid in all other respects.

We are not confined to such narrow ground. As we have repeatedly stated, the direct issue of fraud in fact was tendered in the petition, admitted in the answer of the bankrupt, and found to be true by the court. It was not thereafter an open question.

But it is said that the policy of the bankrupt law is equal distribution among creditors through its own agencies, and, therefore, an assignment for the benefit of creditors without preferences, is looked upon with favor as intended to effect the same general purpose; and, therefore, secondly, a creditor who has attacked the good faith of such an instrument, should not be permitted to intercept the fruits of avoiding it when such avoidance is due to the intervention of the assignee in bankruptcy.

There are two conclusive answers to this view:

1. Equal distribution is contemplated and required only in cases where the creditors stand alike. And only such property can be equally distributed as is free from special prior liens.

2. The kind or character of conveyance which is declared to be an act of bankruptcy, (section 39,) is one which is made with intent to hinder, delay, or defraud creditors.

That is, a conveyance which is fraudulent in fact, and, for that reason, void.

If the bankrupt law made a perfectly innocent transaction, one free from all taint or badge of fraud or bad faith towards creditors, void, or declared it to be hostile to its spirit and purpose, which perhaps it might have done, then there would be some ground for holding that none but those claiming under that law could derive benefit from its operation upon such transactions, because in such case a hostile creditor could get nothing except by invoking the aid of the law, whose operation as to himself he would repudiate.

Litigants are not in general permitted to maintain totally repugnant or inconsistent positions concerning the same subject-matter.

But the policy of the bankrupt law must not be overworked. The policy of that law was not intended to relieve a bankrupt's property of all liens or to affect, disturb, or defeat any lien, unless it be such as are fraudulent in their inception and designed to defeat the operation of the act itself.

The fact that a particular creditor occupies a position in advance of other creditors, and hence may reap a larger proportion of assets, cannot alter the meaning of the law and is no reason for putting an arbitrary or despotic construction upon its language.

If he had a valid judgment, issued a valid execution, and seized thereon, in regular conformity to statute, his debtor's goods, or goods he believed to be his debtor's, he was only doing just what he had a right to do, and what he is entitled to be protected in doing. He had a right to be vigilant. If he committed no fraud, if his proceedings were orderly, regular, his vigilance should give him priority over other creditors who slept. With all respect to the learned judge who rendered the decision in 15 N. B. Reg., 228, we insist that it is not the policy of the bankrupt law to put all creditors upon the same plane, or deny to any one the fruits of

his vigilance. Vigilance is not blameworthy, but meritorious.

The cases of Dodge v. Sheldon, 6 Hill, and Seaman v. Stoughton, 3 Barb. Ch., 344, are rested upon the peculiar language of the bankrupt act of 1841, and furnish slight support to the construction attempted to be put upon the present law.

See opinion in latter case on page 349.

Under the bankrupt act now in force, a conveyance made with intent to delay, defraud, or hinder creditors is not only an act of bankruptcy, but is an actual fraud, a fraud in fact, void at common law.

Under the second section of the act of 1841, an intent to delay or defraud was not necessary. The mere conveyance was null and a fraud on the law. Hence there was ground to hold that such conveyance could only be taken advantage of by those who claimed under that law.

Here the intent to hinder or delay creditors is a substantive fact, and has no necessary connection with an intent to evade or commit a fraud on the bankrupt law; and it is the making of an assignment with the former, not necessarily the latter intent, which is expressly declared to be an act of bankruptcy.

Assignments thus tainted with actual fraud have always been considered void. That the bankrupt law so regards them adds nothing to their inherent invalidity. They are rotten at the core. The effect of the bankruptcy proceedings, in the case at bar, is to make the general fraudulent character of the assignment a matter of record. The status or relative position of creditors among themselves is not changed. That is measured and fixed by what they had or had not done, before bankruptcy supervened. That one may be in a better position than another, as to the estate, is no excuse for putting an arbitrary or despotic construction on any provision of the bankrupt law. That law is not a Procrustean bed by which to make equal the interests of

creditors in all cases—equal distribution is the rule only as to unencumbered property, and among creditors similarly situated. The assignee does not occupy the position of a *bona fide* purchaser, but takes *cum onere*.

III.

THE COURT ERRED IN DECREEING THAT THE LEVY SET OUT IN COMPLAINANT'S BILL WAS INVALID AND OF NO EFFECT.

The authorities cited and the argument made under the previous points are applicable here.

It is further suggested that before such decree could properly be made, it was necessary to find that the assignee had made out a *prima facie* title, which could only be done by showing from the record, where it so appeared, that the assignment to Combs was made with an actual intent to delay, defraud, or hinder creditors, and was, therefore, void.

The record does not show whether the court below found the assignment to Combs good and unassailable, except as an act of bankruptcy. If such was the finding, the court must have overlooked or disregarded the effect of the adjudication upon the character of that assignment, and considered the question an open one, to be litigated and determined anew.

In this the court clearly erred. The question was not an open one, and the testimony, which was duly objected to, found in the record, introduced to support that instrument, was improperly received and considered.

It is probable, however, that the court only looked at the instrument as being of apparent fairness and good on its face; and regarding the levying creditor as not entitled to intercept any of the fruits of avoiding it through the machinery of the bankrupt law—her levy was decreed invalid on that ground alone.

But how did the complainant make out his title to the contested property? There was other property in the same store not levied on—about which there was no

contest, Combs surrendering at once to the marshal, upon the adjudication—as to that his title was undisputed; but how could he show a better title than the sheriff had who had been in possession for weeks under his levy; his title could not be presumed; he must prove it.

Goodrich vs. Remington, 6 Blatchf., 515.

To prove his official status, his right to maintain an action at all, he was obliged to produce and rely on the record which contained a judgment establishing the character of the Combs assignment, as a fraud in fact—made with a positive intent to hinder, delay, and defraud creditors, and hence void as to them, as well those claiming special liens as those claiming none. The only way, then, for the assignee to show title to the property levied on, was to show what the stipulation restricted him to showing, that the judgment was collusive—the execution a nullity, or the levy unlawful, irregular, incomplete, or intended as a cover for fraud.

If the sheriff got no grip at all on the property; if his levy was unlawful; if what he did was insufficient to constitute a levy under the laws of Minnesota, then the decree was right—there was no levy. Otherwise, it was erroneous and should be reversed.

It must not be understood that we admit the assignment to Combs to be valid or intended as a real *bona fide* appropriation of the debtor's property to the payment of his debts. Had such been Shuey's intent it would have found expression in a voluntary petition in bankruptcy. The sole appointed lawful way to effectuate such intent was open to him. It was a narrow, but safe, sure path, tending to but one goal.

Why did he turn his back upon it and take the broader road? Why did he ignore the one legal, efficient mode of making equal distribution of his property among all his creditors and resort to what Judge Emmons, in 14 N. B. R., 327, so appropriately styles, "that old chronic instrumen-

tality of fraud and delay," if he meant fairly and squarely to give his creditors the full benefit of his property? And when he also knew that, by the former course, he could get a full discharge, while in the latter he could not? Most lawyers in full practice know why, and most business men know why, too. It is scarcely necessary to enter into particulars.

The badges of fraud are numerous.

The defence made to the action on a plain promissory note was fraudulent.

Shuey's conduct and representations to the plaintiff's attorney were deceitful and misleading. The exultant proclamation of the assignment by Shuey's attorney showed that they thought their devices had given them an advantage.

The appointment of a book-seller as assignee; his retaining the workmen and clerks at liberal salaries and continuing the business, giving it but little or no supervision; the absence of an inventory, or any steps taken to ascertain the kind and nature of the property assigned; the notification of his creditors that an assignment had been made—all these things are *indicia* of the one dominating purpose which Shuey was in such haste to admit, at the instance of his banker, to wit, that the assignment was made with intent to hinder, delay, and defraud creditors.

In every view, therefore, the decree was wrong, and should be reversed, and the case sent back with instructions to dismiss the bill.

E. C. PALMER,
Counsel for Appellant.

SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1878.
No. 99.

SARAH W. REED, Impleaded with LUCY S. SANDERSON,
Appellant,
against
CHARLES W. McINTYRE, Assignee in Bankruptcy of WILLIAM H. SHUEY,
Respondent.

RESPONDENT'S BRIEF.

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RESPONDENT'S BRIEF.

STATEMENT OF THE CASE.

March 13th, 1874, William H. Shuey, of Saint Paul, Minnesota—who w s then and there a retail merchant and trader—being insolvent, made a general assignment for the benefit of his creditors without preference to one William S. Combs. That said William S. Combs then and there accepted said trust and entered upon his duties as such assignee, and took possession of all of said property so assigned to him as aforesaid. That afterwards and on the 14th day of March, 1874, the appellant, his

aunt, Sarah W. Reed, recovered judgment in the District Court of Ramsey county, and State of Minnesota, against said William H. Shuey for the sum and amount of $5120 45-100, damages and costs. That execution was issued thereon the same day, and placed in the hands of John Grace, sheriff of Ramsey county for service, and by him levied upon the property so assigned by said William H. Shuey to said William S. Combs, and said property was taken from the possession of said William S. Combs by said sheriff by force, and against the protest of said Combs. That afterwards, and on April 4th, 1874, said William S. Combs caused to be served on said John Grace, said sheriff, a demand for the return of said property, fully and particularly setting on the nature of his title and right thereto, the value thereof, &c., as required by the laws of the State of Minnesota. That said sheriff refused to deliver said property to said Combs.

That E. C. Palmer, the attorney of Sarah W. Reed, had actual personal notice of the making of said assignment by William H. Shuey to said William S. Combs, the acceptance of said trust by Combs and the taking possession of said property by Combs before the recovery of said judgment in favor of Sarah W. Reed.

That on the 31st day of March, 1874, one Lucy S. Sanderson, who was then and there the sister of said Sarah W. Reed, through her then attorney, Harvey Officer, filed her petition in bankruptcy in the United States District Court for the District of Minnesota, asking that said William H. Shuey be declared a bankrupt. That said E. C. Palmer was at the time of the recovery of said judgment in favor of said Sarah W. Reed also the attorney of Lucy S. Sanderson. That said Lucy S. Sanderson employed Harvey Officer to institute said bankruptcy proceedings at the instance and request of said Palmer. That said Officer at the time of the filing of said petition in bankruptcy, was well aware of the making of said assignment to Combs, and the recovery of said judgment by said Sarah W. Reed, and the levy of said execution thereunder.

That said Shuey was, upon said petition of Lucy S. Sanderson, April 2d, 1874, adjudicated bankrupt by said United States District Court.

That on the 20th day of April, 1874, this respondent was duly elected assignee in bankruptcy of said William H. Shuey, and at once entered upon his duties as such assignee.

That on the 29th day of April, 1874, this respondent duly demanded of said sheriff John Grace, possession of said property so levied upon by him, and served upon him the usual affidavit and notice.

That said John Grace refused to deliver said property to this respondent. That at the time of the filing of the petition in bankruptcy, above referred to, an injunction issued out of said United States District Court restraining said Sarah W. Reed, her agents and attorneys from disposing of said property levied upon under said execution. That said Sarah W. Reed thereafter made a motion to dissolve said injunction, which was denied by said United States District Court. That thereafter this respondent and said Sarah W. Reed entered into a stipulation, (see page 4, folio 12, of record,) wherein it was provided that this respondent might sell and dispose of the property so levied on as aforesaid, and deposit the funds realized from said sale in the depository of said bankrupt court—the said appellant Sarah W. Reed and this respondent to have the same right to and lien upon, if any, the proceeds of the sale of said property as they had upon the property itself. That said stipulation was approved by said United States District Court and filed therein. That in pursuance of said stipulation this respondent took possession of said property, converted the same into money, and deposited the same as provided in said stipulation. That thereupon this respondent filed his bill of complaint in the United States Circuit Court for the District of Minnesota, to set aside and have declared null and void the lien of said appellant on said funds, by virtue of the levy of said execution. That thereafter, and at the June, 1875,

term of the United States Circuit Court for the District of Minnesota, the cause having come on to be heard before said United States Circuit Court, Justice Miller presiding, after argument of counsel a decree was entered declaring said execution to be invalid and of no effect, and that the property so levied upon and seized thereunder, and every part thereof, rightly belonged to and was vested in the complainant therein, this respondent, free and clear and discharged from said execution, and from said levy thereunder, and from all lien and claim of said defendant therein, this appellant, Sarah W. Reed, thereto, under and by virtue of the said execution and levy. Further, that the fund so realized from the sale of said goods so levied on and deposited in the depository of said Bankrupt Court as aforesaid, belonged to this respondent, said complainant therein, as such assignee. From which decree said Sarah W. Reed duly appealed to this Court.

ARGUMENT.

I.

At the time of the making of said assignment by said Shuey to said Combs, there was no statute in force in reference to assignments in the State of Minnesota, consequently the common law prevailed. Our State Supreme Court has frequently and uniformly upheld such assignments and declared them to be valid: also the Courts of the United States: in fact, they have always been regarded as valid in this country.

II.

No question is made but what the assignment so made by Shuey to Combs was valid and regular, and authorized by law:

and that the same was made in good faith; that Shuey was insolvent at the time of the making of said assignment, and that the assignee Combs had entered into the possession of the assigned property before the judgment, and before the levy of the execution.

III.

The assignment being regular was not void, but simply voidable, and only voidable as to the assignee in bankruptcy, and was good and valid against all the world beside.

John P. Cook *et al.*, agst. Eli B. Rogers, 31 Michigan, (9 Post,) page 391, and cases cited.

Mayer *et al.*, agst. Hellman, 1 Otto, 496.

Globe Insurance Company agst. Cleveland Insurance Company, 14 N. B. R. 311, and cases cited.

Cragin agst. Thompson, 2 Dillon, 515.

IV.

The assignee, W. S. Combs, having taken possession of the assigned property before the judgment, and before the levy of the execution, was the legal owner of the property and entitled to the possession of the same, consequently the levy was wrongful and a trespass, and the judgment creditor obtained no valid lien thereon, by virtue thereof. But it is claimed that the proceedings in bankruptcy having avoided the assignment, that therefore, by virtue of said bankruptcy proceedings, the levy of the execution became operative.

The object of the bankrupt act was to provide primarily for the equal and ratable distribution of the assets of insolvents among their creditors. Can it be said that through the operation of that law one creditor can be put in a better and more favorable position than he was before the operation of the law was invoked?

Everett v. Stone, 3 Story, 454-5.
Dodge v. Sheldon, 6 Hill, (N. Y.,) 9.
31 Michigan, (9 Post,) page 391, and cases cited.
Penniman v. Cole, 8 Metc., (Mass.,) 496.

V.

The legal title to the property vested in the assignee Combs, by virtue of the assignment. The judgment creditor obtained no lien upon the property by virtue of the execution against Shuey, because Shuey, at the time of the levy, had no leviable interest therein. The proceedings in bankruptcy, the appointment of this respondent as assignee, and the deed of conveyance to him of the assets of the bankrupt, vested the property in him. The property assigned was never the property of Shuey after his assignment. If such is the case the judgment creditor never obtained a lien thereon, by virtue of her wrongful levy. It is obvious that the seizure under the execution was wrongful and a trespass. It created no rights. The matter remained in that condition until the petition for adjudication of bankruptcy was filed, and so continued until an actual adjudication was made and entered. Such adjudication, when made, related back to the time when such petition was filed, *so that there never was an instant of time when such seizure was rightful.*

In re Arthur A. Hull, 18 N. B. R., page 5.
In re Steele *et al.*, 16 N. B. R., page 105.
In re John C. Walker, 18 N. B. R., page 56.
In re M. J. Nelson, 16 N. B. R., 312.
Johnson, Assignee, agst. Rogers *et al.*, 15 N. B. R., page 1.
Dodge agst. Sheldon, 6 Hill, (N. Y.,) 9.
Seaman agst. Stoughton, 3 Barb., Ch. R., 344.
Everett agst. Stone, 3 Story, 454-5.
In re James Croughwell, 17 N. B. R., 338.
Penniman agst. Cole *et al.*, 8 Metc., (Mass.,) 496.

In re Bieseuthal, 15 N. B. R., page 228, and cases cited.

In the case last above cited, *in re* Bieseuthal, 15 N. B. R., Judge Johnson reviewing the decision of the District Court, says: 15 N. B. R., pages 231, 232, 233.

"The substantial question is, whether, under these provi-
"sions of the law, creditors by judgment and execution obtained
"after the assignment, having, by reason of it, no lien upon or
"right in the assigned property, are to be let in to intercept and
"take precedence of the rights of an assignee in bankruptcy to the
"property or its value, when he exercises his right to avoid the
"assignment and to recover the property. Upon this question the
"opinion and decision of Judge Wallace against the claim of the
"judgment creditor is given in *Johnson*, Assignee, v. Rogers, 15
"N. B. R., 1. In Macdonald, Assignee, v. Moore *et al.*, 15 N.
"B. R., 26, Judge Blatchford reaches a different conclusion,
"and each of these learned judges has stated the arguments and
"considerations which led him to his conclusion.

"Between these conflicting views the controlling and decisive
"consideration seems to me to be that which MR. JUSTICE STORY
"puts forward as the ground of his judgment upon a similar
"question under the bankrupt act of 1841, in the case of Everett
"v. Stone, 3 Story, 454-5. He says, in substance, the judgment
"creditors c nnot avail themselves of a fraud under the bankrupt
"act to defeat the very policy of the act itself.

"That policy is equal distribution among creditors through
"the agencies of the bankrupt law.

"To avoid the assignment as in conflict with that policy, and
"as a consequence to allow particular creditors to intercept the
"fruits of avoiding it, and thus prevent equal distribution, would
"be contradictory, and would subvert that whole laudable pur-
"pose of the bankrupt act, so far as creditors are concerned.

"These considerations were overlooked in McLean v. Meline,
"3 McLean, R. 201, where it is assumed rather than adjudicated
"that if an assignment could be avoided under the bankrupt

"act the necessary consequence was that judgment creditors "would be let in to claim according to their priorities, in pre- "ference over the assignee in bankruptcy.

"The acts of the assignee in bankruptcy do not inure to in- "crease the rights of the judgment and execution creditors. "(Dodge v. Sheldon, 6 Hill, 9; Seaman v. Stoughton, 3 Barb., "Ch. R. 344.)

"When the assignee recovers the property he takes it as the "debtor had it at the time of the act which the assignee avoids, "so far as creditors of the debtor are concerned. Avoiding the "transfer in favor of the assignee in bankruptcy does not revest "the property in the debtor, but vests it directly in the assignee "who takes it by virtue of the statute. The transfer by the "debtor, good against him, and good against his creditors, pre- "vents any lien by subsequent judgment or execution.

"Upon the property so situated the statutory transfer to the "assignee in bankruptcy operates directly, and cannot be sub- "jected to the liens of intervening judgments and executions, "without overthrowing both the language and the policy of the "bankrupt act in its most vital provisions."

VI.

We submit that that provision of the bankrupt act, the construction of which is here involved being same as the Massachusetts Insolvency Law, the construction placed thereon by the highest court of that State, should be accepted upon the principle that imported statutes come with the interpretation placed on them by the courts of the State whence they come.

Now the case of Penniman v. Cole *et al.*, 8 Metcalf, (Mass.,) 496, was, in all essential particulars, like the one at bar, and we quote as much of the decision as bears on the questions at bar—the court say pages 499, 500, 501.

"But by *St.* 1838, c. 163, § 10, a sale or transfer of any part

"of his estate by a debtor, in contemplation of insolvency, to a "creditor with a view of giving him a preference, is to be held "void as against his other creditors, in like manner and to the "same effect as deeds made to hinder, delay, or defraud creditors. "And the assignees may recover from the creditor such es ate so "transferred to him, or the value thereof, for the use of the "other creditors. This provision is extended by St. 1841, c. 124, "§ 3, to such conveyances by way of preference, which are made "within six months before the filing of the petition by or against "the debtor.

"The object of thus enlarging the rights of the general "creditor is to give greater efficiency to the system of insolvency "thus enacted. As it regards the debtor it is intended to take "away the motive for giving preferences, and in respect to the "creditors it is designed to give each a proportional share of the "debtor's estate; and, thus by guarding against inequality and "fraud to secure to the debtor his discharge.

"It is argued, however, that when a conveyance is avoided on "account of such preference in favor of the general creditors, "an individual creditor who may have attached the property of "the debtor and levied upon it is as well let in to take advan- "tage of the conveyance thus avoided as those are who claim "under the statute assignment, and that, if the levy precedes "the process under the statute, his title under the levy shall be "established.

"But we are of opinion that this provision is created ex- "pressly for the benefit of those creditors who come in under "the commission and prove their debts; to secure which the "right is conferred upon the assignee to sue for and recover the "property for their use. The words of the statute avoiding con- "veyances made in contemplation of insolvency are, indeed, "general, but they are to be construed in connection with, and "are limited by the subject to which they relate. The provisions "of the statute are made for the benefit of those who come in

"under it to share the effects of the insolvent equally, and are "not to be extended to him who refuses to come in under the "commission, and yet would avail himself of the terms of the "act to secure his whole debt. To enable such a person to hold "an estate so levied upon, he must go further, and prove that "the conveyance was made with the design, not of giving a "preference merely, but of delaying, hindering, or defrauding "creditors, and as such may be avoided by a creditor without "reference to the statutes respecting insolvency, and precisely "as he might have done if t ey had never existed.

"In this case the tenants do neither prove nor aver that the "conveyance to Joseph Holbrook, in January, 1843, prior to "their attachment, was made to delay, hinder, or defraud "credit rs, nor that it was not for a valuable consideration. "They rely merely on the fact that the conveyance was voidable "by force of the statutes of insolvency under which the debtor's "property has been assigned by force of a commission against "him, and to which they have not become parties."

VII.

It is sufficiently obvious under the proofs that the two sisters, Sarah W. Reed and Lucy S Sanderson, acting through their common agent at Saint Paul, Sanders, contemplated getting rid of the assignment by bankruptcy proceedings, collecting one of the claims in full by execution, and collecting a dividend *pro rata* on the other, with Shuey's other creditors. To allow such a proceeding to succeed under the bankrupt law, a law designed to secure equality among creditors, would be intolerable.

VIII.

The decree of the Circuit Court should be affirmed, with dama-

ges. The case is so clear that the rule in that behalf should be applied, and thus partially relieve the estate of the costs and expenses thus wrongfully made.

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